

From: Hanson, Andrew
Sent: Thursday, April 6, 2017 10:08 PM
To: Goodin, John <Goodin.John@epa.gov>
Cc: Bowles, Jack <Bowles.Jack@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Subject: Re: WOTUS letter - signature process

Hi John,

Please keep in mind that the scanned digital version we (OCIR) send to our targeted Big 10 reps -- attached to an electronic scheduler -- will be the primary (most effective and expedient) means of ensuring the invitation letter gets to the right intergov association participants, incl. the water association reps. The greeting should be "Dear Intergovernmental Association Colleague".

The signed/mailed hard copy letters referred to below will be, as a practical matter, a superfluous part of the actual notification process.

EOn Apr 6, 2017, at 5:41 PM, Goodin, John <Goodin.John@epa.gov> wrote:

Folks—below is where the process stands for sending out the Federalism invite letter tomorrow.

Jack—Brian Hope indicated he'd circulate the pdf since you'll want to send digitally as well. He also mentioned that Lincoln said the Administrator may have thoughts on the recipient list (now dropped from the letter itself).

Andrew and Damaris are taking a first cut at drafting presentation materials for the 19th, including how to characterize the Federalism opportunity in light of the two-step process.

Thanks

John

From: Knapp, Kristien

Sent: Thursday, April 06, 2017 5:28 PM

To: Hope, Brian <Hope.Brian@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Burden, Susan <Burden.Susan@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>

Subject: WOTUS letter - signature process

Because we all have a part to play and this is urgent, I am setting out the plan we've all just talked about for getting the WOTUS letter signed tomorrow morning.

1. Tonight or first thing tomorrow morning, OW will create a control in CMS for the letter, and then forward to OEX.
2. At some point tonight or tomorrow morning, Lincoln will send us all a final version of the letter, once it has been approved by the Administrator.
3. Once we have the final letter, OEX (Brian and Cynthia) will prepare the letter for the Administrator's signature.
4. OEX will deliver the letters to Susan Burden, who will take them to the Administrator to sign.
5. Once signed, Susan will PDF, and send to Lincoln for OPA purposes.
6. Susan will return the signed letters to OEX for recordkeeping, close out, and mailing.

Lincoln, please keep us all posted on your end, especially if you have timing needs so that we can help you meet them. Susan Burden will be your main point

of contact in the Administrator's Office tomorrow. She will make sure this gets signed and follows all the necessary process points.

Please flag any missing points or questions.

<UPDATED FEDCON (002).docx>

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Greenwalt, Sarah
Sent: Fri 4/7/2017 5:36:04 PM
Subject: Re: WOTUS letter - signature process

We are!

Sent from my iPhone

On Apr 7, 2017, at 12:25 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Are we good on this?

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

Begin forwarded message:

From: "Burden, Susan" <Burden.Susan@epa.gov>
Date: April 7, 2017 at 12:22:32 PM CDT
To: "Jackson, Ryan" <jackson.ryan@epa.gov>
Cc: "Threet, Derek" <Threet.Derek@epa.gov>
Subject: FW: WOTUS letter - signature process

Hi Ryan,

Attached is the near-final draft of a letter for Administrator Pruitt's signature. The letter invites state and local partners to a meeting on April 19 to solicit their "input and wisdom on a forthcoming proposal to rescind and revise the definition of waters of the United States (Clean Water Rule: Definition of 'Waters of the United States'; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015))."

Per Lincoln Ferguson's email below, the Administrator has approved this version of the letter. The letter was developed by OW and has been reviewed by Sarah Greenwalt, OCIR, OGC, OW, and Army staff.

While I would normally bring the signature package to you, it's my understanding that the Administrator has asked that the letter to go out today. OCIR will be sending it, via email, to the following people:

Alex Dunn, Carolyn Hanson – ECOS

Andy Karellas, Jeff Stockdale - Council of State Governments

Judy Sheahan – U.S. Conference of Mayors

Carolyn Berndt – National League of Cities

Julie Ufner – National Association of Counties

Ben Husch, Kristen Hildreth – National Conference of State Legislatures

Alex Schaefer – National Governors Association

Mike Griffin, Jack Peterson – County Executives of America

Jennifer Imo – National Association of Towns and Townships

Amber Snowden – International City/County Managers Association

Adam Krantz, Nathan Gardner-Andrews – Nat'l Assoc of Clean Water Agencies

Julia Anastasio, Sean Rolland – Association of Clean Water Administrators

Gerry Baker – Interstate Oil and Gas Compact Commission

Nathan Bowen – Nat'l Association of State Departments of Agriculture

Jeanne Christie, Peg Bostwick – Association of State Wetlands Managers

Please let me know if you have any questions.

Thanks,

Susan

Susan Burden, Ph.D.

Special Assistant (ORD, OCSPP, OCHP, SAB)

Office of the Administrator

U.S. Environmental Protection Agency

Office: (202) 564-6308

Cell: (202) 740-0169

From: Hanson, Andrew
Sent: Friday, April 07, 2017 12:27 PM
To: Burden, Susan <Burden.Susan@epa.gov>
Subject: FW: WOTUS letter - signature process

See below....guess all we need now is the sig!

From: Eisenberg, Mindy
Sent: Friday, April 07, 2017 12:26 PM
To: Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Hanson, Andrew <Hanson.Andrew@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Cc: Bowles, Jack <Bowles.Jack@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>
Subject: RE: WOTUS letter - signature process

I formatted the letter to accommodate Agency letter head and put it in Times Roman 12 font which is standard for all correspondence, so there is more text that carries onto the second page so it doesn't look cut off.

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Ferguson, Lincoln

Sent: Friday, April 07, 2017 12:22 PM

To: Hanson, Andrew <Hanson.Andrew@epa.gov>; Goodin, John <Goodin.John@epa.gov>

Cc: Bowles, Jack <Bowles.Jack@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>

Subject: RE: WOTUS letter - signature process

This version has been approved by the Administrator but needs to be condensed to all fit on one page. Can somebody assist in doing that?

Once that is done we can have it ready for him to sign.

From: Hanson, Andrew
Sent: Thursday, April 6, 2017 10:08 PM
To: Goodin, John <Goodin.John@epa.gov>
Cc: Bowles, Jack <Bowles.Jack@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
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two-step process.

Thanks

John

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To: Hope, Brian <Hope.Brian@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Burden, Susan <Burden.Susan@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>

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Lincoln, please keep us all posted on your end, especially if you have timing needs so that we can help you meet them. Susan Burden will be your main point of contact in the Administrator's Office tomorrow. She will make sure this gets signed and follows all the necessary process points.

Please flag any missing points or questions.

<UPDATED FEDCON (002).docx>

To: Wanda Barrs[wbarrs@duesouthinvestments.com]
Cc: Hupp, Sydney[hupp.sydney@epa.gov]
From: Greenwalt, Sarah
Sent: Thur 4/6/2017 12:02:02 AM
Subject: RE: Wanda and Earl Barrs Follow-up NAFO Meeting 4.5.17

Mr. and Mrs. Barrs,

Thank you for your email. It was such a pleasure to host you all today. I have forwarded your email on to our scheduling team to see if we can set something up.

I look forward to continuing to work with your team on wotus and many other issues in the coming months.

Best,

Sarah A. Greenwalt
Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency
Work: 202-564-1722|Cell: 202-816-1388
Greenwalt.Sarah@epa.gov

-----Original Message-----

From: Wanda Barrs [mailto:wbarrs@duesouthinvestments.com]
Sent: Wednesday, April 5, 2017 6:19 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Earl Barrs <ebarrs@duesouthinvestments.com>; Dave Tenny <dtenny@nafoalliance.org>
Subject: Wanda and Earl Barrs Follow-up NAFO Meeting 4.5.17

Ms. Greenwalt,

It was a pleasure to participate in the NAFO meeting today with Administrator Pruitt and your team. As mentioned Earl and I are tree farmers in GA and across the southeast. Our home tree farm is Gully Branch Tree Farm in Cochran, Bleckley county, GA.

We have hosted students and adults for 22 years attempting to ensure the public connects tree farming and the environment as natural partners. Project Learning Tree is the primary curriculum which uses the forest as a window to discuss clean air, water and products which continually improve our quality of life.

Please feel free to google Gully Branch Tree Farm. Earl and I would be honored to work with your team to provide a hands-on view of this extension of our work. Over the next few days, I will share dates we are scheduled to host students and teachers for field experiences. Of course, we are happy to arrange any opportunity which provide insights.

Gov. Perdue and Mary have visited on numerous occasions and can share their thoughts as well.

Thank you for considering this opportunity.

Best regards,
Wanda Barrs (478.697.0035)
Earl Barrs (478.957.2420)

Sent from my iPhone

To: Edwards, Crystal[Edwards.Crystal@epa.gov]
From: Greenwalt, Sarah
Sent: Tue 4/4/2017 7:54:15 PM
Subject: RE: wotus update

No worries ☺

Sarah A. Greenwalt

Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Edwards, Crystal
Sent: Tuesday, April 4, 2017 3:38 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: RE: wotus update

Sarah,

My apologies I was sending this to another Sarah.

Crystal N. Edwards

United States Environmental Protection Agency

Office of Water

William Jefferson Clinton East Building

Room 3223B

(202)564-1661

From: Edwards, Crystal **On Behalf Of** Shapiro, Mike

Sent: Tuesday, April 04, 2017 3:30 PM

To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>

Subject: RE: wotus update

Hi Sarah,

Follow up to my voicemail, Mike Shapiro will be out of the building on April 5-7 all day attending meetings. I can schedule some other time convenient for both of you guys otherwise Benita Best-Wong, Acting Deputy Administrator of Water can meet with you. Also, do you have a scheduler that I can connect with to schedule this meeting?

Sincerely,

Crystal N. Edwards

United States Environmental Protection Agency

Office of Water

William Jefferson Clinton East Building

Room 3223B

(202)564-1661

From: Shapiro, Mike
Sent: Tuesday, April 04, 2017 10:36 AM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: Re: wotus update

Sarah,

I will stop by

Mike

Michael Shapiro

Deputy Assistant Administrator

US EPA, Office of Water

On Apr 4, 2017, at 10:06 AM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

Hey Mike, can you call me (or stop by if you prefer- 3315D) when you have a second?

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
From: Greenwalt, Sarah
Sent: Tue 4/4/2017 7:31:57 PM
Subject: Re: wotus update

Hi Crystal, Mike and I actually connected earlier, so no need to set something up. Thanks!

Sent from my iPhone

On Apr 4, 2017, at 3:29 PM, Shapiro, Mike <Shapiro.Mike@epa.gov> wrote:

Hi Sarah,

Follow up to my voicemail, Mike Shapiro will be out of the building on April 5-7 all day attending meetings. I can schedule some other time convenient for both of you guys otherwise Benita Best-Wong, Acting Deputy Administrator of Water can meet with you. Also, do you have a scheduler that I can connect with to schedule this meeting?

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Crystal N. Edwards

United States Environmental Protection Agency

Office of Water

William Jefferson Clinton East Building

Room 3223B

(202)564-1661

From: Shapiro, Mike
Sent: Tuesday, April 04, 2017 10:36 AM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: Re: wotus update

Sarah,

I will stop by

Mike

Michael Shapiro

Deputy Assistant Administrator

US EPA, Office of Water

On Apr 4, 2017, at 10:06 AM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

Hey Mike, can you call me (or stop by if you prefer- 3315D) when you have a second?

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Greenwalt, Sarah
Sent: Tue 4/4/2017 4:46:35 PM
Subject: RE: wotus update

That's fine. It's 3315D, which is on the north side and to the right when you exit the Administrator's hallway/alm room.

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Minoli, Kevin
Sent: Tuesday, April 4, 2017 12:45 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: Re: wotus update

I think we are looking at 1:15 if that's ok. And could you please remind me where your office is?

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Apr 4, 2017, at 11:02 AM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

Not a problem, I'll see you around 1:00

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Minoli, Kevin

Sent: Tuesday, April 4, 2017 10:49 AM

To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>

Subject: Re: wotus update

Is 1:00 too late? I'm in the all-day Executive Management Council meeting and our next break is not until 2:30, but I could step out of the 1:00 session. I'm leading the 12:00 session, so if we run behind schedule (we are currently 15 min behind), I may be a few minutes late. Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

On Apr 4, 2017, at 10:04 AM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

Will you please call me (or stop by if you prefer-3315D) when you have a sec?

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Greenwalt, Sarah
Sent: Tue 4/4/2017 3:02:49 PM
Subject: RE: wotus update

Not a problem, I'll see you around 1:00

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Minoli, Kevin
Sent: Tuesday, April 4, 2017 10:49 AM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: Re: wotus update

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Acting General Counsel
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US Environmental Protection Agency
Main Office Line: 202-564-8040

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Will you please call me (or stop by if you prefer-3315D) when you have a sec?

Sarah A. Greenwalt

Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Greenwalt, Sarah
Sent: Tue 4/4/2017 2:04:33 PM
Subject: wotus update

Will you please call me (or stop by if you prefer-3315D) when you have a sec?

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

To: Bennett, Tate[Bennett.Tate@epa.gov]
From: Greenwalt, Sarah
Sent: Mon 4/3/2017 11:33:16 PM
Subject: Re: Checking in on recusal

Hopefully a draft tomorrow?? Still tying up a few loose ends

Sent from my iPhone

On Apr 3, 2017, at 6:19 PM, Bennett, Tate <Bennett.Tate@epa.gov> wrote:

Wanted to see if you might have an update tomorrow? Troy is here now, and we are about to start up a response to the WOTUS recusal letter. If not, no worries! Just wanted to check in.

To: Dravis, Samantha[dravis.samantha@epa.gov]
From: Greenwalt, Sarah
Sent: Mon 4/3/2017 5:59:22 PM
Subject: Re: Connecting

Yeah I'm thinking 5:30, or right after we meet with AP on wotus. Do you want to be on the call as well?

Sent from my iPhone

On Apr 3, 2017, at 1:53 PM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Sarah is there a good time for you to call Damien today ?

From: Damien M. Schiff [<mailto:damienschiff@gmail.com>]
Sent: Monday, April 3, 2017 1:18 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: Re: Connecting

Samantha, thanks for reaching out and congratulations on your new position! I'm generally available for the rest of today, as well as 9 -11 tomorrow west coast time.

D. Schiff

On Mon, Apr 3, 2017 at 6:20 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Damien,

Hoping you remember me from my PLF Internship days! I am writing because I'm now working at EPA under Administrator Pruitt as Associate Administrator for Policy. Sarah Greenwalt, copied here, is Senior Advisor for Water.

We're hoping you might have 10-15 minutes to chat today or tomorrow. Let me know what your schedule looks like, and thanks in advance!

Best,

Samantha

To: Hupp, Sydney[hupp.sydney@epa.gov]
From: Greenwalt, Sarah
Sent: Mon 4/3/2017 1:26:21 PM
Subject: RE: wotus

Yeah then set us up for 4:30, if you would

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Hupp, Sydney
Sent: Monday, April 3, 2017 9:20 AM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE: wotus

He has a few little windows but I predict all of his meetings running over today.

Sydney Hupp

Office of the Administrator- Scheduling

202.816.1659

From: Greenwalt, Sarah

Sent: Monday, April 3, 2017 9:16 AM
To: Hupp, Sydney <hupp.sydney@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE: wotus

If that's the earliest he has then we will make it work!

Sarah A. Greenwalt

Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Hupp, Sydney
Sent: Monday, April 3, 2017 9:15 AM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE: wotus

Is 430 today too late?

Sydney Hupp

Office of the Administrator- Scheduling

202.816.1659

From: Greenwalt, Sarah
Sent: Monday, April 3, 2017 9:10 AM
To: Hupp, Sydney <hupp.sydney@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: FW: wotus

Hey Syd, can you let Sam and I know when he has 5-10 minutes to discuss wotus? The earlier the better, as we need to let OW know asap the direction we're going.

Thanks!

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Dravis, Samantha
Sent: Monday, April 3, 2017 9:08 AM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: RE: wotus

Yes

From: Greenwalt, Sarah

Sent: Monday, April 3, 2017 9:08 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: wotus

Do you want to try to catch AP for 5 or 10 minutes to finalize wotus? Then discuss with OW and OGC and call OMB?

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

To: Ferguson, Lincoln[ferguson.lincoln@epa.gov]
From: Greenwalt, Sarah
Sent: Thur 3/30/2017 12:24:48 PM
Subject: RE: National Cattlemen's speech

I don't remember whether SP has ever said anything on that case.

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Ferguson, Lincoln
Sent: Thursday, March 30, 2017 8:15 AM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: FW: National Cattlemen's speech

Can you talk a look below? This is for a speech he's giving later this morning.

From: Brown, Byron
Sent: Wednesday, March 29, 2017 6:41 PM
To: Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE: National Cattlemen's speech

Here are a couple of talking points on nutrient management issues. You should check with Sarah because previous OK AG Edmondson was involved in a lawsuit against Tyson foods claiming

land application of chicken litter violated RCRA. The court rejected the argument. We could add a sentence or two referencing that decision but not sure what the Administrator's involvement on the issue may have been.

DRAFT

Nutrient management is an important issue that we should be able to work together in cooperation -- and not just as adversaries -- to address.

In recent years, environmental groups have been pushing to get manure regulated as a solid waste under RCRA when it is being properly applied as a fertilizer -- even filing citizen suits against farmers. This is something most courts have rightly been rejecting.

Far too often, EPA has looked to using its regulatory and enforcement tool box to address environmental challenges, but voluntary partnerships with the agriculture community such as the Nutrient Recycling Challenge can achieve real environmental benefits for less cost and result in greater innovation.

From: Ferguson, Lincoln
Sent: Wednesday, March 29, 2017 4:25 PM
To: Brown, Byron <brown.byron@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE: National Cattlemen's speech

Byron, looping you in on this as well.

Don't need anything super detailed – just need a few examples for SP to use tomorrow on rules/regulations that have had a negative effect on farming/ranching community.

From: Ferguson, Lincoln
Sent: Wednesday, March 29, 2017 4:12 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: National Cattlemen's speech

Hey Sam –

Tomorrow is the National Cattlemen's Beef Association speech where SP will be speaking to approx. 300 cattlemen from across the country.

Are there any specific issues/policies he needs to be briefed on prior? WOTUS is obviously going to be their biggest deal, but they've also mentioned FIFRA/CERCLA, the SPCC rule, Clean Air Act and the National Enforcement Initiative.

Right now I have him doing the EPA Originalism speech but want to incorporate some of these if possible. Let me know your thoughts.

Lincoln Ferguson

Office of Public Affairs

(202) 564-1935

U.S. EPA

To: Ferguson, Lincoln[ferguson.lincoln@epa.gov]
From: Greenwalt, Sarah
Sent: Thur 3/30/2017 12:24:18 PM
Subject: RE: National Cattlemen's speech

As I recall, the company on their own initiative began to divert the waste from the Illinois River Basin and started selling more as fertilizer. If we can corroborate that (Clayton, maybe?) then he could say that they are capable of regulating themselves. Although opponents would say that a court case prompted that.

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Ferguson, Lincoln
Sent: Thursday, March 30, 2017 8:15 AM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: FW: National Cattlemen's speech

Can you take a look below? This is for a speech he's giving later this morning.

From: Brown, Byron
Sent: Wednesday, March 29, 2017 6:41 PM
To: Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE: National Cattlemen's speech

Here are a couple of talking points on nutrient management issues. You should check with Sarah because previous OK AG Edmondson was involved in a lawsuit against Tyson foods claiming land application of chicken litter violated RCRA. The court rejected the argument. We could add a sentence or two referencing that decision but not sure what the Administrator's involvement on the issue may have been.

DRAFT

Nutrient management is an important issue that we should be able to work together in cooperation -- and not just as adversaries -- to address.

In recent years, environmental groups have been pushing to get manure regulated as a solid waste under RCRA when it is being properly applied as a fertilizer -- even filing citizen suits against farmers. This is something most courts have rightly been rejecting.

Far too often, EPA has looked to using its regulatory and enforcement tool box to address environmental challenges, but voluntary partnerships with the agriculture community such as the Nutrient Recycling Challenge can achieve real environmental benefits for less cost and result in greater innovation.

From: Ferguson, Lincoln
Sent: Wednesday, March 29, 2017 4:25 PM
To: Brown, Byron <brown.byron@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE: National Cattlemen's speech

Byron, looping you in on this as well.

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Right now I have him doing the EPA Originalism speech but want to incorporate some of these if possible. Let me know your thoughts.

Lincoln Ferguson

Office of Public Affairs

(202) 564-1935

U.S. EPA

To: Bennett, Tate[Bennett.Tate@epa.gov]
From: Greenwalt, Sarah
Sent: Thur 3/30/2017 2:00:33 AM
Subject: Re: WOTUS conflict of interest -- E&E News

It does for me! Hopefully I'll have a document already signed by then :)

Sent from my iPhone

On Mar 29, 2017, at 9:56 PM, Bennett, Tate <Bennett.Tate@epa.gov> wrote:

That's great! 1 PM work? Would be so helpful given press inquiries are slowly starting to trickle in.

Sent from my iPhone

On Mar 29, 2017, at 9:20 PM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

I'm free from 11-2 on Friday. I actually have a draft response assuming the recusal is signed.

Sent from my iPhone

On Mar 29, 2017, at 9:15 PM, Bennett, Tate <Bennett.Tate@epa.gov> wrote:

That's great news. I'm supposed to attend an ECOS meet and greet at 9:30. Any other availability Friday?

Sent from my iPhone

On Mar 29, 2017, at 8:07 PM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

I am not available at 2 or 3, but am free after the COS meeting on Friday. I am working with OGC to get a draft recusal for him to sign asap so that we can say we have one.

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Bennett, Tate

Sent: Wednesday, March 29, 2017 6:48 PM

To: Brown, Byron <brown.byron@epa.gov>

Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>

Subject: Re: WOTUS conflict of interest -- E&E News

Does 2 or 3 PM Friday work? Who from GC, if anyone, would you like there?

Sent from my iPhone

On Mar 29, 2017, at 2:53 PM, Brown, Byron <brown.byron@epa.gov> wrote:

Adding Sarah.

Sent from my iPhone

On Mar 29, 2017, at 1:50 PM, Bennett, Tate <Bennett.Tate@epa.gov> wrote:

See attached. I was actually hoping to find some time to talk strategy with you//Byron/GCthen eventually Ryan.. about how to handle these (we have several conflict of interest letters). Funny thing with this one is that they gave us such a small turnaround time- 8 days- as we have older letters from January. I started to dive into this late last week, briefly chatted with Byron, and then got bogged down by this week's events. The WH is telling us not to respond to any ethics-related, but we want to try and find a way to respond.

Can make myself free around your all's schedules the rest of the week...

From: Dravis, Samantha
Sent: Wednesday, March 29, 2017 1:03 PM
To: Freire, JP <Freire.JP@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>
Subject: RE: WOTUS conflict of interest -- E&E News

Looping in Tate, this is something that would have come through OCIR. What is the status of this, Tate?

From: Freire, JP
Sent: Wednesday, March 29, 2017 1:02 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>
Subject: FW: WOTUS conflict of interest -- E&E News

Sam, not sure if any movement has occurred on this letter, but feel free to call to discuss.

From: Konkus, John
Sent: Wednesday, March 29, 2017 12:55 PM
To: Freire, JP <Freire.JP@epa.gov>
Subject: Fwd: WOTUS conflict of interest -- E&E News

Begin forwarded message:

Resent-From: <Press@epa.gov>
From: Ariel Wittenberg <awittenberg@eenews.net>
Date: March 29, 2017 at 12:51:02 PM EDT
To: Press <Press@epa.gov>
Cc: "Konkus, John" <konkus.john@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>
Subject: **WOTUS conflict of interest -- E&E News**

Hi John and Nancy,

I am hearing from Senate Environment and Public Works Committee Democrats that they have not yet received a response from Administrator Pruitt regarding their March 21 letter asking about how he is handling potential conflicts of interest related to the review of the Clean Water Rule. That letter had asked Administrator Pruitt to respond by today, March 29. I wanted to know if Administrator Pruitt intends to respond to the letter? If so, when? And can I get a copy of his response?

Thanks,

Ariel

Ariel Wittenberg

E&E News reporter

awittenberg@eenews.net

202-737-4557

@arielwittenberg

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Energywire, Climatewire, Greenwire, E&E Daily, E&E News
PM, E&ETV

<EPW.Minority.PDF>

To: Bennett, Tate[Bennett.Tate@epa.gov]
From: Greenwalt, Sarah
Sent: Thur 3/30/2017 1:20:02 AM
Subject: Re: WOTUS conflict of interest -- E&E News

I'm free from 11-2 on Friday. I actually have a draft response assuming the recusal is signed.

Sent from my iPhone

On Mar 29, 2017, at 9:15 PM, Bennett, Tate <Bennett.Tate@epa.gov> wrote:

That's great news. I'm supposed to attend an ECOS meet and greet at 9:30. Any other availability Friday?

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Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

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Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Greenwalt, Sarah

<greenwalt.sarah@epa.gov>

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Cc: Konkus, John <konkus.john@epa.gov>; Bowman, Liz

<Bowman.Liz@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>

Subject: RE: WOTUS conflict of interest -- E&E News

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Cc: Konkus, John <konkus.john@epa.gov>; Bowman, Liz <[Bowman.Liz@epa.gov](mailto: Bowman.Liz@epa.gov)>
Subject: FW: WOTUS conflict of interest -- E&E News

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From: Ariel Wittenberg <awittenberg@eenews.net>
Date: March 29, 2017 at 12:51:02 PM EDT
To: Press <Press@epa.gov>
Cc: "Konkus, John" <konkus.john@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>
Subject: WOTUS conflict of interest -- E&E News

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Thanks,

Ariel

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[@arielwittenberg](#)

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Energywire, Climatewire, Greenwire, E&E Daily, E&E News PM,
E&ETV

<EPW.Minority.PDF>

To: Nickerson, William[Nickerson.William@epa.gov]
From: Greenwalt, Sarah
Sent: Wed 3/29/2017 1:07:20 PM
Subject: Re: meeting today at 9:30

On my way!

Sent from my iPhone

On Mar 28, 2017, at 10:38 AM, Nickerson, William <Nickerson.William@epa.gov> wrote:

I took the liberty of scheduling something on your calendar for Wednesday at 9am. I appreciate the gesture on the coffee, but if I got a cup of coffee every time a meeting was rescheduled I would be seriously over-caffeinated.

From: Greenwalt, Sarah
Sent: Monday, March 27, 2017 7:31 PM
To: Nickerson, William <Nickerson.William@epa.gov>
Subject: RE: meeting today at 9:30

Yes, Wednesday at 9am works great. I'm serious about the coffee, let me know your Starbucks order ☺

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Nickerson, William
Sent: Monday, March 27, 2017 7:13 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: Re: meeting today at 9:30

No problem, I know things are crazy right now. How about Wed between 9-10am?

Sent from my iPhone

On Mar 27, 2017, at 7:05 PM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

Bill, I am so incredibly sorry for missing our meeting. I have been in with the Administrator for the last few hours on a few issues and truly it slipped my mind. I sincerely hope you can forgive my absentmindedness.

Are you free Wednesday morning first thing for a reschedule? I owe you coffee, for sure.

Sarah A. Greenwalt

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U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Nickerson, William
Sent: Monday, March 27, 2017 11:03 AM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Washington, Valerie <Washington.Valerie@epa.gov>
Subject: RE: meeting today at 9:30

Ok, I'll see you in 3315D at 3:30 today.

From: Greenwalt, Sarah
Sent: Monday, March 27, 2017 10:25 AM
To: Nickerson, William <Nickerson.William@epa.gov>
Cc: Washington, Valerie <Washington.Valerie@epa.gov>
Subject: Re: meeting today at 9:30

Let's do 3:30! Sorry, I meant to tell you before you left. Looking forward to it

Sent from my iPhone

On Mar 27, 2017, at 9:03 AM, Nickerson, William <Nickerson.William@epa.gov> wrote:

Would 3:30 or 5pm today work?

William (Bill) Nickerson

Associate Office Director

Office of Regulatory Policy and Management
Office of Policy
Phone: (202) 566-0326

From: Greenwalt, Sarah
Sent: Monday, March 27, 2017 8:34 AM
To: Nickerson, William <Nickerson.William@epa.gov>
Cc: Washington, Valerie <Washington.Valerie@epa.gov>
Subject: meeting today at 9:30

Good morning Bill. Our 8am got pushed to 9am. Are you free later this afternoon for us to meet re: internal agency processes? I'm afraid that 9am meeting will go past 9:30, and I see Sam has asked that we get together at 10am for a wotus discussion.

As of right now I'm free after 3:30.

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Greenwalt, Sarah
Location: 3233 WJCE
Importance: Normal
Subject: Accepted: Clean Water Rule Call in Personal Phone / Ex. 6 passcode Personal Phone / Ex. 6
Start Date/Time: Wed 4/12/2017 2:00:00 PM
End Date/Time: Wed 4/12/2017 2:45:00 PM

To: Nickerson, William[Nickerson.William@epa.gov]
From: Greenwalt, Sarah
Sent: Tue 3/28/2017 3:21:30 PM
Subject: RE: meeting today at 9:30

Haha Well, the coffee is for not having emailed that I was caught up in something. I have never missed a meeting without emailing, and intend not to do it again.

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Nickerson, William
Sent: Tuesday, March 28, 2017 10:39 AM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: RE: meeting today at 9:30

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Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

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for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

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To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Washington, Valerie <Washington.Valerie@epa.gov>
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Associate Office Director

Office of Regulatory Policy and Management
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Phone: (202) 566-0326

From: Greenwalt, Sarah

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To: Nickerson, William <Nickerson.William@epa.gov>

Cc: Washington, Valerie <Washington.Valerie@epa.gov>

Subject: meeting today at 9:30

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Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

To: Washington, Valerie[Washington.Valerie@epa.gov]
From: Greenwalt, Sarah
Sent: Tue 3/28/2017 3:19:30 PM
Subject: FW: OP Highlights for the Administrator's 3/29 NAHB Meeting
03.29.17 Administrator Meeting with National Association of Home Builders Senior Officers.docx

Briefing materials for tomorrow's meeting. I think this meeting is on my calendar 3 times.
No idea what's going on there.

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Knapp, Kristien
Sent: Tuesday, March 28, 2017 10:32 AM
To: Brown, Byron <brown.byron@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>;
Wagner, Kenneth <wagner.kenneth@epa.gov>
Subject: FW: OP Highlights for the Administrator's 3/29 NAHB Meeting

Hello – I have heard that you are all attending the home builders meeting tomorrow. Attached is
a background piece the Policy office put together for the Administrator.

From: Knapp, Kristien
Sent: Tuesday, March 28, 2017 9:33 AM
To: Hupp, Millan <hupp.millan@epa.gov>; Hupp, Sydney <hupp.sydney@epa.gov>; Hale,
Michelle <hale.michelle@epa.gov>
Subject: FW: OP Highlights for the Administrator's 3/29 NAHB Meeting

Good morning – Attached is a background piece for the Administrator for his meeting with the home builders tomorrow. Is anyone else attending, in addition to Byron and Sarah?

Thanks,

Kristien

From: Kime, Robin

Sent: Tuesday, March 28, 2017 9:20 AM

To: Knapp, Kristien <Knapp.Kristien@epa.gov>

Cc: Germann, Sandy <Germann.Sandy@epa.gov>

Subject: OP Highlights for the Administrator's 3/29 NAHB Meeting

Hi,

Attached is very brief background from OP for the Administrator's 3/29 NAHB Meeting. Would be able to you help us get this to his briefing book and the other folks that may need it? Thanks very much!

Meeting with National Association of Home Builders Senior Officers

The Administrator's Office

Wednesday, March 29

3:00 p.m. – 3:30 p.m.

Topic: Overall regulatory reform, stormwater, lead-based paint, and WOTUS

Attendees:

- Granger MacDonald, Chairman of the Board, a Kerrville, Texas-based builder and developer with 40 years of experience in the home building industry.
- Randy Noel, MIRM, CGB, CMP, First Vice Chairman of the Board, a Louisiana-based custom home builder with more than 30 years of experience in the residential construction industry. Noel founded Reve Inc., a custom home building firm in LaPlace, La., in 1985.
- Greg Ugalde, CGP, GMB, Second Vice Chairman of the Board, a Connecticut builder and developer. Ugalde is president and chief legal officer of Torrington-based T&M Building Co., Inc., one of the largest home builders in the state. T&M Homes has built more than 3,500 new single-family attached and detached homes in over 40 Connecticut communities.
- Dean Mon, Third Vice Chairman of the Board, a New Jersey-based builder and developer with more than 30 years of experience in the home building industry. Mon is president of the D.R. Mon Group, Inc., which specializes in the development and construction of green urban living projects throughout New Jersey.
- Gerald M. Howard, Chief Executive Officer, has more than 25 years of lobbying and association experience in Washington, D.C.
- Dave Ledford, EVP, Housing Finance and Regulatory Affairs, NAHB
- Michael Mittelholzer, AVP, Environmental Policy, NAHB

Staffing: Byron and Sarah

POC: Susan Amus; 202.309.2528; sasmus@nahb.org

Highlights Provided by the Office of Policy

- We understand that the meeting will be brief and primarily focused on WOTUS and stormwater regulations. However, we wanted to raise awareness of a few ideas that might be worthy of consideration as follow-up actions.
- OP's Office of Sustainable Communities previously worked with NAHB, high production homebuilders and other trade associations (National Association of Realtors) on a project that laid out the business and environmental case for compact, mixed-use development projects.
 - We believe a follow-up effort with NAHB could focus on opportunities to help small scale builders and developers overcome barriers that make it difficult for them to meet the strong demand for new homes in existing neighborhoods.
 - This would complement current work NAHB has developed in this area.
 - Such an effort would also be helpful to small communities seeking to rebuild their economies since small builders are the primary "developers" in such communities.

- OP's Office of Strategic Environmental Management could also forge a partnership with NAHB related to the work they are currently doing on the White House Permit Streamlining initiative.
 - Although, the effort is primarily aimed at the manufacturing sector, the same principles could be applied to the residential construction sector.

From: Greenwalt, Sarah
Location: 3216WJC-South
Importance: Normal
Subject: Declined: Meeting re: WOTUS in Enforcement Actions
Start Date/Time: Wed 4/5/2017 6:30:00 PM
End Date/Time: Wed 4/5/2017 7:00:00 PM

To: Starfield, Lawrence[Starfield.Lawrence@epa.gov]
From: Greenwalt, Sarah
Sent: Tue 3/28/2017 1:46:22 AM
Subject: Re: tomorrow afternoon - CO springs and possibly water enforcement meetings will need to be rescheduled

Great, thanks Larry. Look forward to the conversation.

Sent from my iPhone

On Mar 27, 2017, at 7:49 PM, Starfield, Lawrence <Starfield.Lawrence@epa.gov> wrote:

Sarah -- That seems to make sense given conflicts.

Ethel -- please re-schedule this for Monday or Wednesday, if possible. Thanks.

Larry

Sent from my Windows Phone

From: [Greenwalt, Sarah](#)
Sent: 3/27/2017 7:42 PM
To: [Starfield, Lawrence](#); [Schwab, Justin](#)
Cc: [Brown, Byron](#); [Cozad, David](#)
Subject: RE: tomorrow afternoon - CO springs and possibly water enforcement meetings will need to be rescheduled

Just to confirm we are moving WOTUS enforcement discussion to next week?

Sarah A. Greenwalt

Senior Advisor to the Administrator

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U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Starfield, Lawrence
Sent: Monday, March 27, 2017 3:58 PM
To: Schwab, Justin <schwab.justin@epa.gov>
Cc: Brown, Byron <brown.byron@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Cozad, David <Cozad.David@epa.gov>
Subject: RE: tomorrow afternoon - CO springs and possibly water enforcement meetings will need to be rescheduled

Understood.

We are trying to find out when the State needs a decision in the Colorado Springs case -- specifically, whether they can wait until after they talk to Jeff Wood later in the week about our preferred approach.

The WOTUS/enforcement discussion can probably wait until next week.

Larry

From: Schwab, Justin
Sent: Monday, March 27, 2017 2:54 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Brown, Byron <brown.byron@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: tomorrow afternoon - CO springs and possibly water enforcement meetings will need to be rescheduled

Larry,

It looks like I at least (and probably the other politicals) will need to block out sufficient time tomorrow afternoon that at least the Colorado springs meeting at 3:30, and possibly also the WOTUS-in-enforcement actions meeting at 4:30, will need to be rescheduled.

I have copied Byron and Sarah here to see if they agree.

Best,

Justin

From: Kime, Robin
Location: HQ-Room-WJCN-2530-50pp
Importance: Normal
Subject: Regulatory Reform Meeting with API - comments attached
Start Date/Time: Tue 5/16/2017 3:00:00 PM
End Date/Time: Tue 5/16/2017 3:30:00 PM
[API EPA reg reform final comments 5-15-17.pdf](#)
[API Attachment 1 - Comments on specific regulations 5-15-17.pdf](#)

Directions: Please use the William Jefferson Clinton North Entrance located on your right as you exit the Federal Triangle Metro Station. Please arrive 20 minutes prior to the meeting with photo IDs to clear Security.

EPA Contact: For an escort from Security to the meeting call (202) 564-4332; for all other matters call Robin Kime (202)564-6587.

Request: We plan on submitting comments to EPA on May 15th regarding regulatory agenda items and would like to sit down with people involved in the process to go through the list.

Attendees:

Lesley Schaaff

Steve Higley

Puneet Verma

Matthew Todd

Al Collins

Marnie Funk

Melissa Shute

Kevin Avery

Khary Cauthen

Thomas Cunningham

David van Hoogstraten

Hilary Moffett

Contact:

Hilary Moffett

Director, Federal Relations

American Petroleum Institute

202-682-8040 (desk)

612-710-8696 (cell)

MoffettH@api.org



Howard J. Feldman
Senior Director

Regulatory and Scientific Affairs

1220 L Street, NW
Washington, DC 20005-4070
USA
Telephone 202-682-8340
Fax 202-682-8270
Email Feldman@api.org
www.api.org

May 15, 2017

Ms. Samantha K. Dravis
Regulatory Reform Officer and Associate Administrator, Office of Policy
US Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460
Submitted via www.regulations.gov

Re: EPA-HQ-OA-2017-0190 (82 FR 17793)

Dear Ms. Dravis:

The American Petroleum Institute ("API") is pleased to provide comments to the US Environmental Protection Agency ("EPA") in response to the EPA's solicitation of input from the public to inform its Regulatory Reform Task Force's evaluation of existing regulations. API represents over 625 oil and natural gas companies, leaders of a technology-driven industry that supplies most of America's energy, supports more than 9.8 million jobs and 8 percent of the U.S. economy, and, since 2000, has invested nearly \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives.

Background

America is now the world's leading producer and refiner of oil and natural gas, a reality that was unimaginable just a decade ago. We've transitioned from an era of energy scarcity and dependence to one of energy abundance and security. The developments of the past decade have brought cost savings for American consumers, good paying jobs, renewed opportunities for U.S. manufacturing, a stronger economy and greater national security. Record U.S. production and refining is happening alongside greater environmental progress: CO₂ from power generation is down to near-30 year lows, thanks in large part to greater use of natural gas. Also, cleaner burning transportation fuels and industry investments in emissions reducing technologies have enabled reduced emissions of criteria air pollutants. In 2015, energy-related savings put an extra \$1,337 back in the pocket of the average American family, and AAA reports that drivers saved as much as \$550 in fuel costs. Energy abundance has helped cut energy and material costs for American manufacturers and is helping to attract manufacturing back to the U.S.

Technological innovations and industry leadership have propelled the oil and gas industry forward, despite the unprecedented level of federal regulatory actions targeting our industry. Consistent with President Trump's stated objectives of American energy independence and economic growth, EPA and other federal agencies should embrace and advance a regulatory system that promotes access to domestic oil and natural gas resources, streamlined permitting and cost-effective regulations. In 2011 and 2015, API supported EPA efforts to relieve the burdens imposed by its rules and the time has come to review those regulations and the additional requirements imposed by the previous Administration, while continuing to promote public health, safety and the environment as industry and citizens support.

API has recently submitted detailed comments to the Department of Commerce and other agencies to improve the manufacturing climate in the United States. (See docket DOC-2017-0001). The business community, including the oil and natural gas industry, relies upon a cost-effective regulatory system that promotes the certainty and predictability necessary to make the massive capital investments required to bring energy and other projects to the U.S. economy.

Key EPA regulations

Below, we highlight three of the key regulations which we urge EPA to review: oil and gas New Source Performance Standards (NSPS), Renewable Fuels Standards (RFS) and Ozone National Ambient Air Quality Standards (NAAQS) implementation. EPA Dockets EPA-HQ-OAR-2010-0505, EPA-HQ-OAR-2016-0004, and EPA-HQ-OAR-2016-0202 respectively contain API's recent comments on these three regulations. Greater detail on those and other regulations is found in Attachment 1, which contains API's detailed comments for the EPA regulatory review.

First, regarding the oil and gas final NSPS rule issued last year,¹ API submitted a detailed petition for administrative reconsideration of the final rule to Administrator McCarthy in August, 2016. The previous 2012 standards and innovation are already effectively reducing emissions. We are encouraged by EPA's April 4, 2017 announcement to review the 2016 standards,² and API supports a full review of all elements of the rule and the revision of the standards. Additionally, we recommend that EPA act quickly to extend the rapidly approaching compliance deadlines while the agency reconsiders the rule. EPA should also withdraw the Control Technique Guidelines it issued in October 2016, which share the same basis as the NSPS rule and call for similar requirements as the NSPS rule.

Second, there are a number of problems with the outdated Renewable Fuel Standard Program. API recommends:

- (1) EPA should utilize its waiver authority to reduce the advanced, cellulosic, and total renewable fuel obligations to ensure the mandate does not exceed the E10 blendwall.
- (2) In order to maintain a market for ethanol-free gasoline, EPA should not set a RFS mandate that would cause the average ethanol content to exceed 9.7 percent of projected gasoline demand. EPA should use realistic projections of E0, E15, E85 and cellulosic demand when setting the annual Renewable Volume Obligations.
- (3) EPA should reject calls to move the RFS Point of Obligation. The RFS has significant structural flaws, and moving the point of obligation will not alleviate them; it will simply reallocate the problems to a different group of fuel supply chain participants. The issue was considered by the two previous administrations and both appropriately decided to place the obligation with refiners and importers.
- (4) EPA should work with Congress to reform and ultimately end this unworkable program as the program does not reflect current market realities and it creates the potential for economic harm.

¹ Final Rule (June 3, 2016; 81 *Fed. Reg.* 35,824) for the Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources (NSPS OOOOa rule)

² 82 *Fed. Reg.* 16,331

Third, regarding the Ozone NAAQS, API has commented previously that the more restrictive ozone standards imposed by EPA in late 2015 were unnecessary, because ambient ozone levels were declining and the public health was already protected with an adequate margin of safety. We also pointed out, as EPA correctly identified, that ozone levels would keep falling. Unfortunately, EPA's new standards create tremendous burden on states and risk significant impacts on job growth, and the potential number of U.S. counties thrown out of attainment could more than triple.

API supports EPA reconsideration of the 2015 Ozone NAAQS based on the issues API identified in its previous comments and court briefs, and is encouraged by EPA's motion to delay oral arguments on the 2015 Ozone NAAQS, while an internal review of the final rule is undertaken. It is critical that the EPA complete this review quickly as deadlines pertaining to the 2008 and 2015 ozone NAAQS are quickly approaching. If the EPA decides not to reconsider the 2015 Ozone NAAQS after its review, we encourage EPA to expeditiously revoke the 2008 Ozone NAAQS as proposed in the 2015 Ozone Nonattainment Area Classifications and SIP Rule in order to avoid unnecessary burden associated with implementing two Ozone NAAQS Simultaneously.

Comprehensive Review of EPA Regulations

In addition to the detailed comments contained in Attachment 1, as part of the review process API suggests, in no priority:

1. The cumulative cost impacts of regulations on individual industrial sectors be considered.
2. The review process seeks and utilizes actual compliance costs from impacted industries to the maximum extent possible.
3. The benefits attributable to any rule be determined based on measurable metrics to the maximum extent possible and be clearly attributable to the regulation under review.
4. Benefits are not double counted, i.e., the same benefits being attributed to multiple rules.
5. The science and data used to support a regulation should be reviewed to determine if they are still valid based on scientific integrity, consistent with EPA's Principles of Scientific Integrity and Policy (2012), with meaningful disclosure of all potential areas of bias, guarding against manipulation or misinterpretation. New information available since promulgation of the rule should be considered, consistent with the provisions mentioned above.
6. Reporting burdens be closely examined to evaluate if the amount, method and frequency of data collection are actually being used to any beneficial purpose and are actually necessary to meet the objectives of the regulation.
7. EPA should consider greater use of general permits as a cost effective permitting alternative.
8. EPA should evaluate how regulations can be written more clearly.
9. EPA should consider incentives for enhancing self-compliance auditing under the EPA Audit Policy and voluntary programs.
10. EPA should consider increasing flexibility in rules to allow sources broader usage of available technologies to monitor, model, and demonstrate compliance. Rules dictating precise monitoring, repair, modeling or compliance methods should be reviewed to eliminate outdated methods (i.e. Method 21 for LDAR monitoring).
11. All rules, including those subject to legal challenges, should be included in the review process.
12. Duplicative and overlapping regulations should be curtailed.
13. Regulations should be examined for any unintended, negative effects on recycling (i.e., regulations that create economic barriers to recycling).

Attachment 2 contains suggestions for future regulations and Attachment 3 highlights relevant economic impact studies.

In conclusion, we look forward to further working with Administrator Pruitt, EPA leadership and staff on these and other rules. Federal regulatory policy can either strengthen or weaken the U.S. energy renaissance, with impacts that extend far beyond our industry. Regulatory actions should be rooted in sound science and data, with a consideration of the costs and benefits, while protecting public health and the environment. With these goals in mind, we stand ready to work with EPA and the rest of the Administration to find reasonable solutions to the challenges before us.

Please do not hesitate to contact me via email at Feldman@api.org via phone at (202) 682-8340 for any clarification or supplemental information.

Sincerely,

Howard J Feldman

Attachments 1-3

Attachment 2

Future Regulations

1. Regulations need to be given a chance to take affect and be implemented before additional requirements controlling the same pollutants from the same sources are rolled out.
2. EPA needs to avoid rushing regulatory development with arbitrary, politically-motivated deadlines. This results in poorly crafted regulations leading to use of private and government resources on multitudes of regulatory revisions or expensive and protracted litigation. This places great cost on industry with no corresponding environmental benefit.
3. EPA should use the results of the review to improve cost/benefit analysis of future proposed regulations.
4. Where EPA identifies excessive regulatory burden, revisions should be made promptly to those regulations to eliminate wasted efforts.
5. EPA needs to look at the broader impacts of its regulations when it is promulgating them. This is inclusive of job impacts, energy security, and viability of regulated and indirectly impacted industries. For example, when EPA was promulgating the section 202 tailpipe light duty vehicle and then the truck standard, it did not consider and quantify the ramifications on stationary sources. The full effect of these regulations was not considered in the rulemaking and there was significant impact upon stationary sources.
6. EPA needs to adhere to the Administrative Procedures Act and other requirements for promulgating regulations and actually conduct detailed analysis prior to rulemaking. These would include, among others: a review of EPA's Information Quality Act Guidelines, where applicable; a detailed Regulatory Flexibility Act analysis to determine the impact of a regulatory action upon small businesses before certifying there is no significant economic impact; Unfunded Mandates Act to determine the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule; Paperwork Reduction Act analysis to see if Office and Management and Budget approval needed for information collection requirements of a rule; an E.O. 13211 review to determine impact on energy supply, distribution and use; an E.O. 12866 review to determine costs and benefits of regulation and reasonably feasible alternatives identified by agencies or the public and to include considering the option of not regulating; an E.O. 13132 and 13175 review as to federalism – what is the impact of a regulation on state and local governments.
7. EPA, state and local governments, affected industry and NGO's need to revisit the automatic regulatory review triggers of the Clean Air Act. Too often, EPA's priorities are focused on meeting a court-imposed deadline for a regulatory review. If EPA wants to improve its regulations and focus on the most significant regulations, it needs Congressional relaxation of the numerous and frequent reviews that are required.

8. EPA should ask for, and carefully consider, comments related to overlap and duplicative/reporting/compliance between/within EPA regulations and those issued by other agencies such as DOT, USCG, etc. Much confusion and wasted time results from trying to interpret overlapping rules and jurisdictions, and complying with duplicative regulatory requirements.
9. EPA should seek industry input during specific regulation review to allow identification of industry issues and opportunity for introducing improved approaches.
10. Regulations should facilitate, rather than impede reducing, reusing, and/or recycling of raw materials. For example, requiring burdensome TSCA reporting of industrial by-products that are subsequently recycled or reused discourages businesses from engaging in ventures that may have positive benefits for the environment.

Attachment 3

Relevant Economic Impact Studies

List of API studies relevant to the economic impact of the EPA regulations

API contractors prepared the economic impact studies on EPA regulations listed below. API will provide the full studies to EPA upon request.

Report: Economic Impacts Resulting from Implementation of the RFS2 Program

Contractor / date: NERA Economic Consulting; July, 2015

Issue: Renewable Fuel Standard

Summary: NERA concluded, in affirming their previous study, that implementing the Renewable Fuel Standard at statutory volumes was infeasible and would result in severe economic harm. Severe economic harm is caused by insufficient RINs, market disruptions and outrageously high consumer costs for gasoline and diesel.

Report: Economic and Supply Impacts of a Reduced Cap on Gasoline Sulfur Content

Contractor / date: Turner, Mason & Company / February, 2013

Issue: Tier 3 fuel standards

Summary: TM&C quantified the economic and supply impacts of a reduction in the per gallon sulfur cap from current limits, with regards to a lower annual average sulfur limit of 10 ppm. TM&C concluded that the lower annual average sulfur limit of 10 ppm would effectively impose a tighter per gallon cap, but that imposing a tighter cap would increase capital costs by \$2 to \$6 billion and increase annual operating costs by \$900 million. The overall potential loss of gasoline supply due to a tighter cap could be 130,000 barrels per day, but in some regions, shortages could reach 25% to 50% during outages of sulfur reduction units. TM&C showed that a sulfur cap reduction would increase capital and operating costs, reduce compliance flexibility, and could result in potential loss of gasoline supplies.

Report: Addendum to Potential Supply and Cost Impacts of Lower Sulfur, Lower RVP Gasoline

Contractor / date: Baker & O'Brien; March 2012

Issue: Tier 3 fuel standards

Summary: Baker & O'Brien assessed potential impacts of fuel regulations related to tier 3 fuel standards. Across the scenarios examined, annual compliance cost ranged from \$13.2 billion to \$2.4 billion and compliance investment ranged from \$17.3 billion to \$9.6 billion. Scenario parameters closest to tier 3 regulations (sulfur reduction only, no change to RVP) resulted in estimated annual compliance costs of \$2.4 billion and compliance investment of \$9.8 billion. Allocated to gasoline production costs, the fuel regulations in the scenario increase the marginal cost of gasoline in most markets by 6 to 9 cents per gallon.

Report: A Comparison of U.S. Oil and Natural Gas Policies: Pro-Development vs. Proposed Regulatory Constraints

Contractor / date: Wood Mackenzie; June 2015

Issues: Ozone, Methane emissions from existing sources, Clean Water Act, Refinery NSPS, Renewable Fuel Standard, NEPA

Summary: This study compared a "Pro-Development Policy" path and a "proposed regulatory constraints" path that modeled the total cumulative impacts of 10 regulatory initiatives from the EPA and other federal agencies. Individual impacts of proposed or recent regulations were not calculated. The study found that a path of regulatory constraints could lead to a reduction 3.4 million barrels of oil equivalent in US production, a loss of 830,000 jobs, a decrease of \$133 billion per year in the U.S. economy, and a cumulative loss of \$500 billion in government revenue.

Report: API Comments on the Proposed Rulemaking – Standards of Performance for New Stationary Sources: Oil and Natural Gas Production and Natural Gas Transmission and Distribution – Attachment E, API’s Review of EPA’s Cost Benefit Analysis

Contractor / date: Environmental Resources Management, Inc. (ERM); December 2015

Issue: New source performance standard for oil production and natural gas transmission and distribution; (40 CFR Part 50, Subpart OOOOa)

Summary: ERM provided a critical review and analysis of the RIA provided by EPA for the proposed changes to the NSPS OOOOa Rule. ERM found that EPA underestimated the technical costs of controls by nearly \$500 million (\$310 million versus \$806 million), and overestimated the emissions benefits by more than 43,000 metric tonnes, equating to roughly \$64 million. As a result, ERM calculated that the rule would result in social net costs, not benefits, over approximately \$410 million in 2025. ERM provided additional commentary on the inappropriate use of the social cost of methane by EPA.

Report: A Review of the Damage Functions Used in Estimating the Social Cost of Carbon

Contractor / date: NERA Economic Consulting; February 2014

Issue: IWG Social Cost of Carbon calculation

Summary: NERA performed a literature review regarding IAM damage functions and provided context for the damage functions used in the IWG analysis. NERA found that the uncertainties that underlie the SCC values resulting from uncertainties in damage functions create significant problems within the SCC. Possible damage estimates at a given point could differ by a factor of 20 or more, a fact that is obscured within the SCC. The report concluded that the parameter values and calibration procedure for the damage functions used in the modeling supporting the SCC are arbitrary. As a result, the IWG would need to significantly improve the characterization of uncertainties in the SCC in order to provide credibility.

Report: Energy Market and Macroeconomic Impacts of Compliance with a Rule Targeting Existing Oil and Gas Sources

Contractor / date: Earth System Sciences Inc. (ESS) and NERA Economic Consulting (NERA); Expected May 2017

Issue: Potential existing source performance standard for methane emissions from oil and natural gas operations

Summary: Incremental costs (net of recovered gas) are estimated to be in excess of \$3 billion per year. Costs are dominated in the Onshore Production and Gathering segment. Annual reoccurring costs are dominated by leak detection and recovery (LDAR). Estimated reduction of GDP \$7 to \$11 billion per year and a reduction of jobs supported in the economy of 60,000 to 125,000 job-equivalents. Economic impacts are near the higher end of the range in the early years but continue through end of modeling time horizon (2031).

List of other studies relevant to the economic impact of the EPA regulations

API would like to highlight the following economic impact studies on EPA regulations listed below.

National Association of Manufacturers

Report: Economic Impacts of a 65 ppb National Ambient Air Quality Standard for Ozone

Contractor / date: NERA Economic Consulting; February, 2015

Issue: Ozone NAAQS

Summary: Emission reductions required to attain a national Ozone NAAQS of 65 parts per billion would reduce national GDP by \$140 billion per year and result in an annual average loss of 1.4 million job-equivalents. In net present value (over the 2017 to 2040 timeframe) national GDP would be reduced by over \$1.7 trillion.

National Association of Manufacturers

Report: Assessing Economic Impacts of a Stricter National Ambient Air Quality Standard for Ozone

Contractor / date: NERA Economic Consulting; July, 2014

Issue: Ozone NAAQS

Summary: Emission reductions required to attain a national Ozone NAAQS of 60 parts per billion would reduce national GDP by \$270 billion per year and result in annual average losses of 2.9 million job-equivalents. Net present value (over the 2017 to 2040 timeframe) of national GDP would be reduced by over \$3 trillion. In a sensitivity case analysis of potential impacts, if new natural gas wells were constrained by the tighter Ozone NAAQS, average annual losses would be \$360 billion in GDP and 4.3 million job-equivalents. The net present value of GDP would be reduced by more than \$4 trillion.

American Council for Capital Formation

Report: Technical Comments on the Social Cost of Methane As Used in the Regulatory Impact Analysis for the Proposed Emissions Standards for New and Modified Sources in the Oil and Natural Gas Sector

Contractor / date: NERA Economic Consulting; December 2015

Issue: Social cost of methane, as used in new source performance standard for oil production and natural gas transmission and distribution; (40 CFR Part 50, Subpart OOOOa)

Summary: NERA provided a critical review of the social cost of methane estimates used in the RIA provided by EPA for the proposed changes to the NSPS OOOOa Rule. NERA took an in depth look at the Integrated Assessment Models used to generate the estimates, and provided modeling runs both to replicate EPA's work and provide corrected estimates. NERA found that correcting for errors in EPA's estimate for the social cost of methane (including discount rates, domestic net benefits, and radiative forcing impacts) could lower the social cost of methane by as much as 94%.

Report: The Impacts of Restricting Fossil Fuel Energy Production

Contractor / date: OnLocation Inc.; April 5, 2017

Issue: Opposition to Fossil Fuels

Summary: Based on the models used, a U.S. policy of "keep it in the ground" is projected to generate the following impacts relative to EIA's Annual Energy Outlook 2016 Reference Case. The keep it in the ground scenario includes no new oil and natural gas leases on private, State or federal lands, a ban on hydraulic fracturing, no new or expansions of existing coal mines, and no new energy infrastructure to transport oil and natural gas within and outside of North America.

US impacts by 2040:

- Loss of 5.9 million jobs
- Loss of \$11.8 trillion in cumulative GDP
- Potential increase of \$4,552 annual energy expenditures per household
- Potential increase of \$40 in the price of a barrel of crude oil (WTI)
- Potential increase of \$21 in the cost of natural gas (MMBTU)
- Potential increase of 56.4 percent in retail electricity prices

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Catanzaro, Michael J. EOP/WHO
Sent: Sun 6/4/2017 7:45:04 PM
Subject: RE:

It's seriously huge. Congrats. I tell you, these stats make each day worth it.

From: Jackson, Ryan [mailto:jackson.ryan@epa.gov]
Sent: Sunday, June 4, 2017 3:43 PM
To: Catanzaro, Michael J. EOP/WHO <Michael.J.Catanzaro@who.eop.gov>
Subject: RE:

CPP and WOTUS on the board.

We have the most things going on outside HHS. That's a good stat.

From: Catanzaro, Michael J. EOP/WHO [mailto:Michael.J.Catanzaro@who.eop.gov]
Sent: Sunday, June 4, 2017 3:41 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: RE:

Makes sense. I'll check in tomorrow. Thanks.

From: Jackson, Ryan [mailto:jackson.ryan@epa.gov]
Sent: Sunday, June 4, 2017 3:29 PM
To: Catanzaro, Michael J. EOP/WHO <Michael.J.Catanzaro@who.eop.gov>
Subject: RE:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Catanzaro, Michael J. EOP/WHO [<mailto:Michael.J.Catanzaro@who.eop.gov>]
Sent: Sunday, June 4, 2017 3:21 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: RE:

Got it. I'll talk with Dom tomorrow. You around tomorrow as well?

From: Jackson, Ryan [<mailto:jackson.ryan@epa.gov>]
Sent: Sunday, June 4, 2017 2:28 PM
To: Catanzaro, Michael J. EOP/WHO <Michael.J.Catanzaro@who.eop.gov>
Subject:

I'm going to be traveling with Pruitt Tuesday and miss the meeting.

Deliberative Process / Ex. 5

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

(202) 564-6999

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Catanzaro, Michael J. EOP/WHO
Sent: Mon 6/12/2017 2:14:34 PM
Subject: RE:

Deliberative Process / Ex. 5

-----Original message-----

From: Jackson, Ryan [mailto:jackson.ryan@epa.gov]
Sent: Monday, June 12, 2017 9:33 AM
To: Catanzaro, Michael J. EOP/WHO <Michael.J.Catanzaro@who.eop.gov>
Subject:

Deliberative Process / Ex. 5

Chief of Staff
U.S. EPA
(202) 564-6999

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Bolen, Brittany
Sent: Mon 6/12/2017 1:35:51 PM
Subject: RE:

Ok. Will be in your office then.

-----Original Message-----

From: Jackson, Ryan
Sent: Monday, June 12, 2017 9:31 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Re:

Let's meet at 10:30.

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

> On Jun 12, 2017, at 9:01 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

>

> Yes, it's been at OMB since Thursday.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

>

>> On Jun 12, 2017, at 9:00 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

>>

>> **Deliberative Process / Ex. 5**

>>

>>

>> Ryan Jackson

>> Chief of Staff

>> U.S. EPA

>> (202) 564-6999

>>

>>> On Jun 12, 2017, at 8:59 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

>>>

Deliberative Process / Ex. 5

>>>

>>>

>>>

>>>> On Jun 12, 2017, at 8:51 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

>>>>

>>>> And WOTUS?

>>>>

>>>>

>>>> Ryan Jackson

>>>> Chief of Staff

>>>> U.S. EPA

>>>> (202) 564-6999

>>>>

>>>>> On Jun 12, 2017, at 8:43 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

>>>>>

>>>>> Today we will have the short and long-term oil and gas rule delays to sign. I know Liz is also planning a press release on the RMP extension since that was good news she didn't want to bury it in a Friday press release.

>>>>>

>>>>>> On Jun 12, 2017, at 8:39 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

>>>>>>

>>>>>> We need some good news today. What all do we have to sign and or send to OMB or the Federal Register?

>>>>>>

>>>>>>

>>>>>> Ryan Jackson

>>>>>> Chief of Staff

>>>>>> U.S. EPA

>>>>>> (202) 564-6999

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Catanzaro, Michael J. EOP/WHO
Sent: Mon 6/12/2017 1:34:14 PM
Subject: RE:

Ok, will inquire now.

-----Original Message-----

From: Jackson, Ryan [mailto:jackson.ryan@epa.gov]
Sent: Monday, June 12, 2017 9:33 AM
To: Catanzaro, Michael J. EOP/WHO <Michael.J.Catanzaro@who.eop.gov>
Subject:

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Bolen, Brittany
Sent: Mon 6/12/2017 1:01:58 PM
Subject: Re:

Deliberative Process / Ex. 5

> On Jun 12, 2017, at 9:00 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

>

Deliberative Process / Ex. 5

>

> _____
> Ryan Jackson
> Chief of Staff
> U.S. EPA
> (202) 564-6999

>

>> On Jun 12, 2017, at 8:59 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

>>

Deliberative Process / Ex. 5

>>

>>

>>> On Jun 12, 2017, at 8:51 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

>>>

>>> And WOTUS?

>>>

>>>

>>> _____
>>> Ryan Jackson
>>> Chief of Staff
>>> U.S. EPA
>>> (202) 564-6999

>>>

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>>>>>

>>>>> _____
>>>>> Ryan Jackson
>>>>> Chief of Staff
>>>>> U.S. EPA
>>>>> (202) 564-6999

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Catanzaro, Michael J. EOP/WHO
Sent: Sun 6/4/2017 7:41:08 PM
Subject: RE:

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From: Jackson, Ryan [mailto:jackson.ryan@epa.gov]
Sent: Sunday, June 4, 2017 3:29 PM
To: Catanzaro, Michael J. EOP/WHO <Michael.J.Catanzaro@who.eop.gov>
Subject: RE:

Yes.



Deliberative Process / Ex. 5

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Sent: Sunday, June 4, 2017 3:21 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: RE:

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To: Catanzaro, Michael J. EOP/WHO <Michael.J.Catanzaro@who.eop.gov>
Subject:

I'm going to be traveling with Pruitt Tuesday and miss the meeting.

Deliberative Process / Ex. 5

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

(202) 564-6999

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Catanzaro, Michael J. EOP/WHO
Sent: Sun 6/4/2017 7:21:12 PM
Subject: RE:

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Sent: Sunday, June 4, 2017 2:28 PM
To: Catanzaro, Michael J. EOP/WHO <Michael.J.Catanzaro@who.eop.gov>
Subject:

I'm going to be traveling with Pruitt Tuesday and miss the meeting.

Deliberative Process / Ex. 5

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

(202) 564-6999

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Mancini, Dominic J. EOP/OMB
Sent: Sat 6/3/2017 2:09:25 PM
Subject: Re:

Thanks, and sorry we couldn't connect: we will try to call perhaps Sunday if you are around.

> On Jun 3, 2017, at 10:06 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:
>

Deliberative Process / Ex. 5

>

> _____
> Ryan Jackson
> Chief of Staff
> U.S. EPA
> (202) 564-6999

To: Catanzaro, Michael J. EOP/WHO[Michael.J.Catanzaro@who.eop.gov]
From: Jackson, Ryan
Sent: Mon 6/12/2017 2:17:50 PM
Subject: RE:

I have a 2pm with Tom Donohue and the Administrator. Only Brittany and I are in the U.S. but that's ok. We need this resolved.

-----Original Message-----

From: Catanzaro, Michael J. EOP/WHO [mailto:Michael.J.Catanzaro@who.eop.gov]
Sent: Monday, June 12, 2017 10:15 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: RE:

We need a resolution here, I agree. I want bring everyone together this afternoon. What time works for you guys?

-----Original Message-----

From: Jackson, Ryan [mailto:jackson.ryan@epa.gov]
Sent: Monday, June 12, 2017 9:33 AM
To: Catanzaro, Michael J. EOP/WHO <Michael.J.Catanzaro@who.eop.gov>
Subject:

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

To: Catanzaro, Michael J. EOP/ Who[michael.j.catanzaro@who.eop.gov]
From: Jackson, Ryan
Sent: Mon 6/12/2017 1:33:27 PM

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Jackson, Ryan
Sent: Mon 6/12/2017 1:30:41 PM
Subject: Re:

Let's meet at 10:30.

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

> On Jun 12, 2017, at 9:01 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

>

Deliberative Process / Ex. 5

>> On Jun 12, 2017, at 9:00 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

>>

Deliberative Process / Ex. 5

>>

>> Ryan Jackson
>> Chief of Staff
>> U.S. EPA
>> (202) 564-6999

>>

>>> On Jun 12, 2017, at 8:59 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

>>>

Deliberative Process / Ex. 5

>>>

>>>

>>>

>>>> On Jun 12, 2017, at 8:51 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

>>>>

>>>> And WOTUS?

>>>>

>>>>

>>>> Ryan Jackson
>>>> Chief of Staff
>>>> U.S. EPA
>>>> (202) 564-6999

>>>>

>>>>> On Jun 12, 2017, at 8:43 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

>>>>>

>>>>> Today we will have the short and long-term oil and gas rule delays to sign. I know Liz is also planning a press release on the RMP extension since that was good news she didn't want to bury it in a Friday press release.

>>>>>

>>>>>> On Jun 12, 2017, at 8:39 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

>>>>>>

>>>>>> We need some good news today. What all do we have to sign and or send to OMB or the Federal Register?

>>>>>

>>>>>

>>>>> Ryan Jackson

>>>>> Chief of Staff

>>>>> U.S. EPA

>>>>> (202) 564-6999

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Jackson, Ryan
Sent: Mon 6/12/2017 1:29:53 PM
Subject: Re:

We need to go. **Deliberative Process / Ex. 5** I'm tired of this.

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

> On Jun 12, 2017, at 9:01 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

>

Deliberative Process / Ex. 5

>> On Jun 12, 2017, at 9:00 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

>>

Deliberative Process / Ex. 5

>>

>> Ryan Jackson
>> Chief of Staff
>> U.S. EPA
>> (202) 564-6999

>>

>>> On Jun 12, 2017, at 8:59 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

>>>

Deliberative Process / Ex. 5

>>>

>>>

>>>

>>>> On Jun 12, 2017, at 8:51 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

>>>>

>>>> And WOTUS?

>>>>

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>>>> Ryan Jackson
>>>> Chief of Staff
>>>> U.S. EPA
>>>> (202) 564-6999

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>>>>>

>>>>>

>>>>> Ryan Jackson

>>>>> Chief of Staff

>>>>> U.S. EPA

>>>>> (202) 564-6999

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Jackson, Ryan
Sent: Mon 6/12/2017 1:00:48 PM
Subject: Re:

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

> On Jun 12, 2017, at 8:59 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

Deliberative Process / Ex. 5

>
>
>
>> On Jun 12, 2017, at 8:51 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

>>
>> And WOTUS?
>>
>>

>> Ryan Jackson
>> Chief of Staff
>> U.S. EPA
>> (202) 564-6999
>>

>>> On Jun 12, 2017, at 8:43 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:
>>>

>>> Today we will have the short and long-term oil and gas rule delays to sign. I know Liz is also planning a press release on the RMP extension since that was good news she didn't want to bury it in a Friday press release.

>>>
>>>> On Jun 12, 2017, at 8:39 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:
>>>>

>>>> We need some good news today. What all do we have to sign and or send to OMB or the Federal Register?

>>>>
>>>>
>>>> Ryan Jackson
>>>> Chief of Staff
>>>> U.S. EPA
>>>> (202) 564-6999

To: Catanzaro, Michael J. EOP/WHO[Michael.J.Catanzaro@who.eop.gov]
From: Jackson, Ryan
Sent: Sun 6/4/2017 7:43:20 PM
Subject: RE:

CPP and WOTUS on the board.

We have the most things going on outside HHS. That's a good stat.

From: Catanzaro, Michael J. EOP/WHO [mailto:Michael.J.Catanzaro@who.eop.gov]
Sent: Sunday, June 4, 2017 3:41 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: RE:

Makes sense. I'll check in tomorrow. Thanks.

From: Jackson, Ryan [mailto:jackson.ryan@epa.gov]
Sent: Sunday, June 4, 2017 3:29 PM
To: Catanzaro, Michael J. EOP/WHO <Michael.J.Catanzaro@who.eop.gov>
Subject: RE:

Deliberative Process / Ex. 5

From: Catanzaro, Michael J. EOP/WHO [mailto:Michael.J.Catanzaro@who.eop.gov]
Sent: Sunday, June 4, 2017 3:21 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>

Subject: RE:

Got it. I'll talk with Dom tomorrow. You around tomorrow as well?

From: Jackson, Ryan [<mailto:jackson.ryan@epa.gov>]

Sent: Sunday, June 4, 2017 2:28 PM

To: Catanzaro, Michael J. EOP/WHO <Michael.J.Catanzaro@who.eop.gov>

Subject:

I'm going to be traveling with Pruitt Tuesday and miss the meeting.

Deliberative Process / Ex. 5

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

(202) 564-6999

To: Catanzaro, Michael J. EOP/WHO[Michael.J.Catanzaro@who.eop.gov]
From: Jackson, Ryan
Sent: Sun 6/4/2017 7:29:11 PM
Subject: RE:

Deliberative Process / Ex. 5

From: Catanzaro, Michael J. EOP/WHO [mailto:Michael.J.Catanzaro@who.eop.gov]
Sent: Sunday, June 4, 2017 3:21 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: RE:

Got it. I'll talk with Dom tomorrow. You around tomorrow as well?

From: Jackson, Ryan [mailto:jackson.ryan@epa.gov]
Sent: Sunday, June 4, 2017 2:28 PM
To: Catanzaro, Michael J. EOP/WHO <Michael.J.Catanzaro@who.eop.gov>
Subject:

I'm going to be traveling with Pruitt Tuesday and miss the meeting.

Deliberative Process / Ex. 5

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

(202) 564-6999

To: Catanzaro, Michael J. EOP/WHO[Michael.J.Catanzaro@who.eop.gov]
From: Jackson, Ryan
Sent: Sun 6/4/2017 6:27:58 PM

I'm going to be traveling with Pruitt Tuesday and miss the meeting.

Deliberative Process / Ex. 5

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

(202) 564-6999

To: Mancini, Dominic J. EOP/OMB[Dominic_J._Mancini@omb.eop.gov]
From: Jackson, Ryan
Sent: Sun 6/4/2017 5:34:32 PM
Subject: RE:

I'm around today if you have an opportunity to talk.

-----Original Message-----

From: Mancini, Dominic J. EOP/OMB [mailto:Dominic_J._Mancini@omb.eop.gov]
Sent: Saturday, June 3, 2017 10:09 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Re:

Thanks, and sorry we couldn't connect: we will try to call perhaps Sunday if you are around.

> On Jun 3, 2017, at 10:06 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

>

> Hey so CPP withdraw has been submitted to OMB for interagency. We are pleased on that. For

Deliberative Process / Ex. 5

>

>

> _____
> Ryan Jackson

> Chief of Staff

> U.S. EPA

> (202) 564-6999

To: Mancini, Dominic J. EOP/OMB[Dominic_J._Mancini@omb.eop.gov]
From: Jackson, Ryan
Sent: Sat 6/3/2017 2:48:21 PM
Subject: Re:

Always around to talk WOTUS.

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

> On Jun 3, 2017, at 10:10 AM, Mancini, Dominic J. EOP/OMB <Dominic_J._Mancini@omb.eop.gov> wrote:

>

> Thanks, and sorry we couldn't connect: we will try to call perhaps Sunday if you are around.

>

>> On Jun 3, 2017, at 10:06 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

>>

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Deliberative Process / Ex. 5

>>

>>

>> Ryan Jackson
>> Chief of Staff
>> U.S. EPA
>> (202) 564-6999

To: Catanzaro, Michael J. EOP/ Who[michael.j.catanzaro@who.eop.gov]; Mancini, Dominic J. EOP/ Omb[dominic_j._mancini@omb.eop.gov]
From: Jackson, Ryan
Sent: Sat 6/3/2017 2:06:52 PM

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

To: Hale, Michelle[hale.michelle@epa.gov]
From: Jackson, Ryan
Sent: Wed 4/5/2017 5:57:12 PM
Subject: RE: NAHB letters to Administrator Pruitt

I just don't think it's important and there's an invitation at the bottom which is the real intent of them sending the letter which we need to work out internally before approaching him with it.

From: Hale, Michelle
Sent: Wednesday, April 5, 2017 1:13 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: FW: NAHB letters to Administrator Pruitt

These are the thank you letters for his briefing book.

From: Hale, Michelle
Sent: Wednesday, April 5, 2017 11:19 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Hupp, Sydney <hupp.sydney@epa.gov>; Hupp, Millan <hupp.millan@epa.gov>
Subject: FW: NAHB letters to Administrator Pruitt

Until further notice, I will continue to have items (attached) like this added to the Administrator's briefing book.

From: Mittelholzer, Michael [<mailto:MMittelholzer@nahb.org>]
Sent: Wednesday, April 5, 2017 10:54 AM
To: Hale, Michelle <hale.michelle@epa.gov>
Subject: NAHB letters to Administrator Pruitt

Michelle –

I am seeking your assistance transmitting these two letters to Administrator Pruitt. The first

letter thanks the Administrator for last week's meeting. The second letter is a copy of a letter that has been transmitted to the President praising him for his leadership in signing the Executive Order on "Waters of the United States" rule. Could you please make sure copies of these two letters are shared with the Administrator and members of his senior staff that attended last week's meeting.




Within NAHB's thank you letter to Administrator Pruitt, NAHB's 2017 Chairman of the Board, Mr. Granger MacDonald reiterates our request for the Administrator to address NAHB's Board of Directors during our Midyear meetings in Washington D.C., June 13-17 at the Marriot Wardman Park Hotel.

The Administrator did mentioned during last week's meeting, he has some foreign travel plans for some time in June. However, prior conversations with his staff indicated the Administrator might be available on the afternoon of Thursday, June 15 (e.g., between noon and 2:30 p.m.). **Can you please confirm whether or not the afternoon of Thursday, June 15th is still a possibility?** NAHB staff will of course will remain flexible to the Administrator's schedule for that week.

Thanks again for all your help with last week's meeting. Our senior leadership couldn't have been more pleased with the reception they received from Administrator Pruitt and his senior staff.

- Mike



MICHAEL MITTELHOLZER AVP, Environmental Policy
National Association of Home Builders
1201 15th Street, NW | Washington, DC 20005
d: 202.266.8660 m: 202.997.5423 e: MMittelholzer@nahb.org w: nahb.org
We Build Communities   

April is New Homes Month – celebrate with your favorite home buyer!

Members saved \$20 million last year with Member Advantage!

Jump on those member discounts at nahb.org/ma.

* * *This electronic message, including attachments, may include information that is confidential, proprietary and/or legally privileged. It is intended solely for the use of the individual(s) named as recipients in the message. Any unauthorized use, disclosure, copying or distribution is prohibited. If you are not the intended recipient or have received this e-mail in error, please contact the sender by replying to the e-mail and delete all copies of the original message.* * *

To: Hale, Michelle[hale.michelle@epa.gov]
Cc: Hupp, Sydney[hupp.sydney@epa.gov]; Hupp, Millan[hupp.millan@epa.gov]
From: Jackson, Ryan
Sent: Wed 4/5/2017 5:07:29 PM
Subject: RE: NAHB letters to Administrator Pruitt

We shouldn't put invitations to events in his briefing book. Please don't.

From: Hale, Michelle
Sent: Wednesday, April 5, 2017 11:19 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Hupp, Sydney <hupp.sydney@epa.gov>; Hupp, Millan <hupp.millan@epa.gov>
Subject: FW: NAHB letters to Administrator Pruitt

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Sent: Wednesday, April 5, 2017 10:54 AM
To: Hale, Michelle <hale.michelle@epa.gov>
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Within NAHB's thank you letter to Administrator Pruitt, NAHB's 2017 Chairman of the Board, Mr. Granger MacDonald reiterates our request for the Administrator to address NAHB's Board of Directors during our Midyear meetings in Washington D.C., June 13-17 at the Marriot

Wardman Park Hotel.





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- Mike



MICHAEL MITTELHOLZER AVP, Environmental Policy
National Association of Home Builders
1201 15th Street, NW | Washington, DC 20005
d: 202.266.8660 m: 202.997.5423 e: MMittelholzer@nahb.org w: nahb.org
We Build Communities    

April is New Homes Month – celebrate with your favorite home buyer!

Members saved \$20 million last year with Member Advantage!

Jump on those member discounts at nahb.org/ma.

* * *This electronic message, including attachments, may include information that is confidential, proprietary and/or legally privileged. It is intended solely for the use of the individual(s) named as recipients in the message. Any

unauthorized use, disclosure, copying or distribution is prohibited. If you are not the intended recipient or have received this e-mail in error, please contact the sender by replying to the e-mail and delete all copies of the original message.* * *

To: Dravis, Samantha[dravis.samantha@epa.gov]
From: Jackson, Ryan
Sent: Tue 3/28/2017 11:41:18 AM
Subject: Re: this morning

Has he ever used it?

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

On Mar 28, 2017, at 7:40 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Haha. After he said I'm never using that studio again

Sent from my iPhone

On Mar 28, 2017, at 7:10 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

That would be fine but I think he's doing it from the EPA studio.

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

On Mar 28, 2017, at 6:53 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Is he going to NYC? I'll train up there with him tonight if he's inclined and needs an extra hand? I assume JP is headed up too

Sent from my iPhone

On Mar 28, 2017, at 2:19 AM, Freire, JP <Freire.JP@epa.gov> wrote:

For the group's info: Hannity is happening Tues pm now. Also getting him some regional radio.

From: Jackson, Ryan

Sent: Monday, March 27, 2017 9:12 PM

To: Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Freire, JP <Freire.JP@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Wagner, Kenneth <wagner.kenneth@epa.gov>

Subject: this morning

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

(202) 564-6999

To: Freire, JP[Freire.JP@epa.gov]
From: Jackson, Ryan
Sent: Tue 3/28/2017 11:10:31 AM
Subject: Re: this morning

Please be sure to get to syd and millan.

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

On Mar 28, 2017, at 2:19 AM, Freire, JP <Freire.JP@epa.gov> wrote:

For the group's info: Hannity is happening Tues pm now. Also getting him some regional radio.

From: Jackson, Ryan
Sent: Monday, March 27, 2017 9:12 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Freire, JP <Freire.JP@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Wagner, Kenneth <wagner.kenneth@epa.gov>
Subject: this morning

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

(202) 564-6999

To: Dravis, Samantha[dravis.samantha@epa.gov]
From: Jackson, Ryan
Sent: Tue 3/28/2017 11:10:06 AM
Subject: Re: this morning

That would be fine but I think he's doing it from the EPA studio.

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

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Sent: Monday, March 27, 2017 9:12 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Freire, JP <Freire.JP@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Wagner, Kenneth <wagner.kenneth@epa.gov>
Subject: this morning

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

(202) 564-6999

From: Downing, Donna
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

Nonresponsive Conference Code/ Ex. 6

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for is the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

Deliberative Process / Ex. 5

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday’s meeting!

Donna

(202) 566-1367

To: Melgin, Wendy[melgin.wendy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]; Moffatt, Brett[Moffatt.Brett@epa.gov]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Sachs, Erica[Sachs.Erica@epa.gov]; Williams, Ann[Williams.Ann@epa.gov]; Montella, Daniel[Montella.Daniel@epa.gov]; Lapp, Jeffrey[lapp.jeffrey@epa.gov]; Shamet, Stefania[Shamet.Stefania@epa.gov]; Somerville, Eric[Somerville.Eric@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Schaller, Andrea[schaller.andrea@epa.gov]; Fontenot, Alison[Fontenot.Alison@epa.gov]; Schafer, Jeannette[schafer.jeannette@epa.gov]; McCarthy, Julia[McCarthy.Julia@epa.gov]; Livingston, Peggy[Livingson.Peggy@epa.gov]; Leidy, Robert[Leidy.Robert@epa.gov]; Dean, Heather[Dean.Heather@epa.gov]; Szalay, Endre[Szalay.Endre@epa.gov]; Cherry, Andrew[Cherry.Andrew@epa.gov]; Stokely, Peter[Stokely.Peter@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Flannery-Keith, Erin[Flannery-Keith.Erin@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Keating, Jim[Keating.Jim@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Ludwig-Monty, Sarah[ludwig-monty.sarah@epa.gov]; Balasa, Kate[balasa.kate@epa.gov]; Palomaki, Ashley[Palomaki.Ashley@epa.gov]; Cantilli, Robert[Cantilli.Robert@epa.gov]; Martinez, Maria[Martinez.Maria@epa.gov]; Cindy Barger[cindy.s.barger.civ@mail.mil]; Morgan, James[Morgan.James@epa.gov]
Cc: Peterson, Carol[Peterson.Carol@epa.gov]; Speir, Jeffrey[speir.jeffrey@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]; Horchem, Brad[horchem.brad@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]

Moving time back to accommodate a meeting with have with the Region 9 RTOC.

Nonresponsive Conference Code/ Ex. 6

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for is the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday's meeting!

Donna

(202) 566-1367

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To: Martinez, Maria[Martinez.Maria@epa.gov]

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Moving time back 90 minutes to accommodate the monthly Wetlands Program Call.

Nonresponsive Conference Code/ Ex. 6

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of waters of the US. When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for the recurring biweekly follow-up meeting. I'll schedule additional meetings as developments warrant.

Deliberative Process / Ex. 5

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Donna

(202) 566-1367

From: Hewitt, Julie

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Weekly WOTUS Econ

Start Date/Time: Thur 4/6/2017 3:00:00 PM

End Date/Time: Thur 4/6/2017 4:00:00 PM

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Agenda:

- SBREFA/RFA for Step 2
- A planning meeting to nail down economic analysis methodology for various cost/benefit categories

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Proposed agenda:

- Introduce intern joining our meetings: Avner Krepps
- Update on impacts analysis (Rose or Stacey)
- Update on schedule (Cindy posted to SP)
- Basic information on the emergency response program and data we could use for econ analysis (Brian Schlieger)
- Anything else?

Let's keep the first 3 items to a total of 20 minutes, so we have plenty of time to hear about the emergency response program.

Note the different room (it's above the Post Office, on Pennsylvania Ave corridor): given the agenda item on the emergency response program, we're going to use an OLEM conference room, and at the end of the meeting, troop down to get a brief "tour" of EPA's emergency operations center (it's undergoing renovation so we will have to wait for a more complete tour). Sorry, the tour won't transmit well over Adobe Connect or the phone line.

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Fact sheet -- State no more stringent than provisions.docx

I propose the following for today's agenda:

Deliberative Process / Ex. 5

I will try to add an Adobe Connect link in case Troy or Sarah want to walk us through their documents.

<http://epawebconferencing.acms.com/wotusecon/>

Cc: Schlieger, Brian[schlieger.brian@epa.gov]
To: Hewitt, Julie[Hewitt.Julie@epa.gov]; Doley, Todd[Doley.Todd@epa.gov]; McGartland, Al[McGartland.Al@epa.gov]; Massey, Matt[Massey.Matt@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Guignet, Dennis[Guignet.Dennis@epa.gov]; Scodari, Paul F CIV USARMY CEIWR (US)[Paul.F.Scodari@usace.army.mil]; Thomas Hughes[thomas.e.hughes1.civ@mail.mil]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Robert.W.Brumbaugh@usace.army.mil[Robert.W.Brumbaugh@usace.army.mil]
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Proposed agenda:

Deliberative Process / Ex. 5

BTW, this is a room we haven't used before, and is in the NW corner of WJC West. If you enter at 1301 Constitution, walk around to NW corner on 1st floor, use elevators there, and it's on the 14th St end of the long hallway – the room is not directly on the hallway, so walk through into the cubicle space and the door at the left end is the conference room.

<http://epawebconferencing.acms.com/wotusecon/>

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From: Hewitt, Julie
Location: DCRoomWest6105AAssateague/DC-EPA-West-OST and 866 299-3188,
code 202 566-1031
Importance: Normal
Subject: WOTUS economics
Start Date/Time: Fri 3/31/2017 2:00:00 PM
End Date/Time: Fri 3/31/2017 3:00:00 PM
ECON Schedule 30Mar2017.xlsx
CRW Analysis Flowchart V5.pptx

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Shapiro, Mike
Location: 3233 WJCE
Importance: Normal
Subject: WOTUS **Nonresponsive Conference Code/ Ex. 6**
Start Date/Time: ~~Wed 1/25/2017 3:00:00 PM~~
End Date/Time: Wed 1/25/2017 3:45:00 PM

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Loop, Travis[Loop.Travis@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Klasen, Matthew[Klasen.Matthew@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Kaiser, Sven-Erik[Kaiser.Sven-Erik@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Schnare, David[schnare.david@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Bangerter, Layne[bangerter.layne@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Frithsen, Jeff[Frithsen.Jeff@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]; Stokely, Peter[Stokely.Peter@epa.gov]

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Subject: Clean Water Rule **Nonresponsive Conference Code/ Ex. 6**

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Loop, Travis[Loop.Travis@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Klasen, Matthew[Klasen.Matthew@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Kaiser, Sven-Erik[Kaiser.Sven-Erik@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Schnare, David[schnare.david@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Bangerter, Layne[bangerter.layne@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Frithsen, Jeff[Frithsen.Jeff@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]; Stokely, Peter[Stokely.Peter@epa.gov]; Frazer, Brian[Frazer.Brian@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Keating, Jim[Keating.Jim@epa.gov]; ian.p.osullivan@usace.army.mil[ian.p.osullivan@usace.army.mil]; jennifer.a.moyer@usace.army.mil[jennifer.a.moyer@usace.army.mil]; David.F.Dale@usace.army.mil[David.F.Dale@usace.army.mil]; Breen, Barry[Breen.Barry@epa.gov]; Cheatham, Reggie[cheatham.reggie@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Schmauder, Craig R SES (US)[craig.r.schmauder.civ@mail.mil]; Lamont, Douglas W SES (US)[douglas.w.lamont2.civ@mail.mil]

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[WOTUS2 proposed plan 3-22-17 draft.docx](#)

[overall Rule Timeline 3-21-17.xlsx](#)

[Rule Timeline short v5.xlsx](#)

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AGENDA WOTUS MEETING



April 26, 2017

10:00-10:45am

WJC EAST 3233

Telecom: 1-866-299-3188, access 202-566-1290#

1. Introductions (3 min)
2. Draft preamble for Step I proposed rule (20 min)
3. Rulemaking Updates (15 min)
 - a. Recap Federalism meeting and potential next steps
 - b. Preparing for Tribal consultation
 - c. Senior leadership check-ins
4. Planned stakeholder discussions (5 min)
 - a. Environmental groups brownbag (4/24)
 - b. State associations (4/26)
 - c. Tribal webinar (4/27)
 - d. National Response Team (4/27)
5. Next steps

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To: Loop, Travis[Loop.Travis@epa.gov]; Breen, Barry[Breen.Barry@epa.gov]

Agenda -- WOTUS 14 June 2017.docx

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: WOTUS economics

Start Date/Time: Fri 3/31/2017 2:00:00 PM

End Date/Time: Fri 3/31/2017 3:00:00 PM

ECON Schedule 30Mar2017.xlsx

CRW Analysis Flowchart V5.pptx

Deliberative Process / Ex. 5

To: OGC WLO[OGC_WLO@epa.gov]
From: Wehling, Carrie
Sent: Wed 3/1/2017 1:13:35 PM
Subject: FW: FYI: Executive Order and Notice of Intention Regarding the Clean Water Rule

FYI

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Kwok, Rose

Sent: Tuesday, February 28, 2017 7:49 PM

To: OW-OWOW-WD <OWOWOWWD@epa.gov>; EPA Wetlands Program Staff
<EPA_Wetlands_Program_Staff@epa.gov>; EPA Wetlands Managers
<EPA_Wetlands_Managers@epa.gov>; EPA Wetlands Legal Staff
<EPA_Wetlands_Legal_Staff@epa.gov>

Cc: Alexander, Laurie <Alexander.Laurie@epa.gov>; Frithsen, Jeff <Frithsen.Jeff@epa.gov>;
Nickerson, William <Nickerson.William@epa.gov>; Auerbach, Daniel
<Auerbach.Daniel@epa.gov>

Subject: FYI: Executive Order and Notice of Intention Signed Today Regarding the Clean Water Rule

Hi Folks,

In case you haven't heard the news, today the President signed an Executive Order directing EPA and the Corps to review and rescind or revise the Clean Water Rule. The Administrator subsequently signed a joint Notice of Intention to Review and Rescind or Revise the Clean

Water Rule, and Douglas Lamont from the Army will be signing the notice on March 1, 2017. We have updated the Clean Water Rule website to include these two documents:
<https://www.epa.gov/cleanwaterrule>.

The Executive Order is available at: <https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>.

The prepublication version of the *Federal Register* notice is available at:
<https://www.epa.gov/cleanwaterrule/notice-intention-review-and-rescind-or-revise-clean-water-rule>.

From: Hewitt, Julie

Location: 4339-B WJC West Building and

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Weekly WOTUS Econ

Start Date/Time: Thur 5/25/2017 3:00:00 PM

End Date/Time: Thur 5/25/2017 4:00:00 PM

Agenda:

Deliberative Process / Ex. 5

<http://epawebconferencing.acms.com/wotusecon/>

To: Kupchan, Simma[Kupchan.Simma@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]
Cc: Youngblood, Charlotte[Youngblood.Charlotte@epa.gov]; Gonzalez, Brenda[gonzalez.brenda@epa.gov]
From: Neugeboren, Steven
Sent: Fri 5/5/2017 2:40:57 AM
Subject: FW: draft response to Sen. Carper -- WOTUS rewrite letter
[04-18-17TCtoPruittWotusrewrite.pdf](#)
[Carper Response CWR Rulemaking May 2 draft.docx](#)

Simma – can you pls take a look. **Deliberative Process / Ex. 5** hx

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Youngblood, Charlotte
Sent: Thursday, May 04, 2017 4:18 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Gonzalez, Brenda <gonzalez.brenda@epa.gov>
Subject: FW: draft response to Sen. Carper -- WOTUS rewrite letter

Steve,

Can someone in WLO please take a quick look at this Congressional response (drafted by OCIR)? (It's not long). It concerns recent press coverage reporting that the agency may rely on private lawyers to revise the 2015 Clean Water Rule. Brenda Gonzalez from our office (cc'd here) is taking the lead on ushering this response out. Please let us know if you/your staff have any edits?

We hope to get this sent out next week, if possible.

Thanks,

Charlotte Youngblood

Deputy Associate General Counsel

General Law Office

Office of General Counsel

U.S. Environmental Protection Agency

(202) 564-0283

youngblood.charlotte@epa.gov

JAMES M. INHOFE, OKLAHOMA
SHELLEY MOORE CAPITO, WEST VIRGINIA
JOHN BOOZMAN, ARKANSAS
ROGER WICKER, MISSISSIPPI
DEB FISCHER, NEBRASKA
JERRY MORAN, KANSAS
MIKE ROUNDS, SOUTH DAKOTA
JONI ERNST, IOWA
DAN SULLIVAN, ALASKA
RICHARD SHELBY, ALABAMA

THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK
CORY A. BOOKER, NEW JERSEY
EDWARD J. MARKEY, MASSACHUSETTS
TAMMY DUCKWORTH, ILLINOIS
KAMALA HARRIS, CALIFORNIA

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
GABRIELLE BATKIN, MINORITY STAFF DIRECTOR

April 18, 2017

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
Ariel Rios Federal Building
1200 Pennsylvania Avenue, NW
Room 3000
Washington, DC 20460

Dear Administrator Pruitt:

I write with incredulity regarding a report in *Politico* stating that industry groups with close ties to you are studying whether the Environmental Protection Agency (EPA) “could hire lawyers from the private sector to redo the Obama administration’s most controversial water rule,” known as the Clean Water Rule. Active consideration of such an approach suggests either that EPA lacks the appropriate staff or budgetary resources to complete a new rule or that the agency intends to devolve its regulatory obligations to industry. Frankly, neither reason for considering such an action is acceptable. I question the legal validity of allowing industry to assist the agency in writing a rulemaking proposal, and consider it an utter and complete abdication of EPA’s responsibility to protect the water and people of this country.

According to the article in today’s *Politico*, the Waters Advocacy Coalition is involved in active discussions about how the EPA might utilize the private sector to re-write the Clean Water Rule, and do so rapidly. This group, represented by Hunton & Williams LLP, advocates on behalf of more than 60 industry organizations who seek to restrict the degree to which they are regulated. If it were employed, such outsourcing would enable EPA to avoid having to work as closely with the career officials who drafted the last version of this rule during the Obama Administration, and it would also address the failure by EPA to appoint political officials who could themselves oversee such an effort.

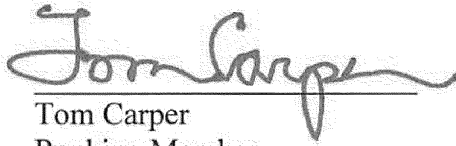
Another possible justification for considering outsourcing rulemaking to industry is that the EPA expects not to have sufficient financial resources to do its work. It is not surprising that the President’s proposed 30 percent cut to EPA’s fiscal year 2018 budget, and the loss of twenty percent of its workforce, would constrain the agency’s ability to function as it is obligated to do. However, the solution to that problem is not to outsource the development of rules designed to protect the air, water, and public health to the polluters themselves. I urge you in the strongest possible terms to disavow this reported industry plan, if true, and recommit yourself to ensuring that EPA’s budget and workforce are maintained at levels necessary to perform its vital mission of protecting human health and our environment.

So that I can better understand what your views and plans are with respect to this reported plan to outsource the regulatory process to the regulated industries themselves, I ask that you provide me with responses to the following requests no later than close of business on May 12, 2017:

1. Do you agree that it is EPA's sole responsibility to draft regulations designed to protect the environment by itself, after seeking input from all stakeholders? If not, why not?
2. Would you be supportive of an industry-led effort to rewrite the Clean Water Rule (or any other) regulation? If so, why, and on what legal basis?
3. Please provide me with a copy of all documents (including but not limited to emails, calendar items, white papers, memos, correspondence, presentations and telephone logs) regarding EPA's planned re-write of the Clean Water Rule that relate in any way to a) the legality of delegating part or all of the re-write to non-governmental officials; b) discussion of any resource constraints associated with EPA's planned re-write of this rule and the timeline therefor; and c) discussions between EPA (including members of its beachhead and transition teams), White House, other Executive Branch personnel or non-governmental officials regarding a non-governmental role in the process of re-writing this regulation.

If you have any questions about these requests, please feel free to contact Michal Freedhoff or Christophe Tulou at the Committee on Environment and Public Works at 202-224-8832. I very much appreciate your prompt attention to this matter.

Sincerely yours,



Tom Carper
Ranking Member

From: Kupchan, Simma
Location: Call in **Nonresponsive Conference Code/ Ex. 6**
Importance: High
Subject: Canceled: Fed Reg Prep for WOTUS
Start Date/Time: Tue 5/30/2017 6:30:00 PM
End Date/Time: Tue 5/30/2017 7:00:00 PM
FRL-9962-34-OW Elizabeth Thomas.docx
2014 40 CFR 122.docx

I will be working flexiplace, so deleting the room (as it would have been a trek for you anyway.)

2014 40 CFR 122.2

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- **LEXISNEXIS' CODE OF FEDERAL REGULATIONS**
- **TITLE 40 -- PROTECTION OF ENVIRONMENT**
- **CHAPTER I -- ENVIRONMENTAL PROTECTION AGENCY**
- **SUBCHAPTER D -- WATER PROGRAMS**
- **PART 122 -- EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**
- **SUBPART A -- DEFINITIONS AND GENERAL PROGRAM REQUIREMENTS**

§ 122.2 Definitions.

- The following definitions apply to parts 122, 123, and 124. Terms not defined in this section have the meaning given by CWA. When a defined term appears in a definition, the defined term is sometimes placed in quotation marks as an aid to readers.

* * * * *

Waters of the United States or waters of the U.S. means:

- (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (b) All interstate waters, including interstate "wetlands;"
- (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
- (f) The territorial sea; and
- (g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water

which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.] Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Whole effluent toxicity means the aggregate toxic effect of an effluent measured directly by a toxicity test.

NOTE: At 45 FR 48620, July 21, 1980, the Environmental Protection Agency suspended until further notice in § 122.2, the last sentence, beginning "This exclusion applies . . ." in the definition of "Waters of the United States." This revision continues that suspension. n1

n1 EDITORIAL NOTE: The words "This revision" refer to the document published at 48 FR 14153, Apr. 1, 1983.

40 CFR 122.2

To: Carrie Wehling[Wehling.Carrie@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]
From: Kupchan, Simma
Sent: Tue 3/28/2017 2:19:46 PM
Subject: FW: discuss draft economics framework for rule
[Proposed Framework for Economic Analysis for New WOTUS Proposed Rule v4.clean.docx](#)
[ATT00001.htm](#)

FYI.

Simma Kupchan

Water Law Office

US EPA Office of General Counsel

William Jefferson Clinton Building North Room 7426Q

(p) 202-564-3105

From: Eisenberg, Mindy
Sent: Monday, March 27, 2017 7:23 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna
<Downing.Donna@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Kwok, Rose
<Kwok.Rose@epa.gov>
Subject: Fwd: discuss draft economics framework for rule

Deliberative Process / Ex. 5

Sent from my iPhone

Begin forwarded message:

From: "Hewitt, Julie" <Hewitt.Julie@epa.gov>
Date: March 27, 2017 at 6:50:49 PM EDT
To: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "McGartland, Al"
<McGartland.Al@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>,
"Jensen, Stacey M CIV USARMY HQDA (US)" <Stacey.M.Jensen@usace.army.mil>,
Cindy Barger <cindy.s.barger.civ@mail.mil>, "Doley, Todd" <Doley.Todd@epa.gov>,
"Massey, Matt" <Massey.Matt@epa.gov>, "Neugeboren, Steven"
<Neugeboren.Steven@epa.gov>

Cc: "Guignet, Dennis" <Guignet.Dennis@epa.gov>

Subject: RE: discuss draft economics framework for rule

Deliberative Process / Ex. 5

Julie Hewitt

Associate Director for Economics

Engineering and Analysis Division

Office of Science & Technology, Office of Water

U.S. Environmental Protection Agency

EPA West Building

1200 Pennsylvania Avenue, N.W.

Room 6233-H and Mail Code 4303T
Washington, DC 20460

(202) 566-1031

(202) 566-1053 fax

Hewitt.Julie@epa.gov

<http://water.epa.gov/scitech/wastetech/guide/>

-----Original Appointment-----

From: Eisenberg, Mindy

Sent: Friday, March 24, 2017 8:42 AM

To: Eisenberg, Mindy; McGartland, Al; Nickerson, William; Jensen, Stacey M CIV
USARMY HQDA (US); Barger, Cindy S CIV USARMY HQDA ASA CW (US); Hewitt,

Julie; Doley, Todd; Massey, Matt; Neugeboren, Steven

Cc: Guignet, Dennis

Subject: discuss draft economics framework for rule

When: Friday, March 24, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: call-in 8662993188, 2025661290#

F
s

Deliberative Process / Ex. 5

thanks

To: Wehling, Carrie[Wehling.Carrie@epa.gov]
Cc: Albores, Richard[Albores.Richard@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]; Prabhu, Aditi[Prabhu.Aditi@epa.gov]
From: Trudeau, Shaun
Sent: Fri 3/3/2017 8:30:32 PM
Subject: RE: Clean Water Rule - DOJ is asking about the draft Notice to Sixth Circuit
DRAFT with Comments - ENV DEFENSE-#797541-v1-
WOTUS_NOTICE_to_Sixth_Circuit_of_Executive_Order_... (002).docx

....
>>>>
Hi Carrie,

Deliberative Process / Ex. 5

Thank you!

Shaun

Shaun R. Trudeau

Attorney-Advisor

Operational Special Assistant to the Principal Deputy
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202.564.5127

From: Wehling, Carrie
Sent: Friday, March 03, 2017 2:43 PM
To: Trudeau, Shaun
Subject: RE: Clean Water Rule - DOJ is asking about the draft Notice to Sixth Circuit

Deliberative Process / Ex. 5

~~Carrie (Carrie) Wehling~~

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Trudeau, Shaun
Sent: Friday, March 03, 2017 2:36 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Albores, Richard <Albores.Richard@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: RE: Clean Water Rule - DOJ is asking about the draft Notice to Sixth Circuit

Deliberative Process / Ex. 5

Shaun R. Trudeau

Attorney-Advisor

Operational Special Assistant to the Principal Deputy
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202.564.5127

From: Wehling, Carrie
Sent: Friday, March 03, 2017 1:51 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Cc: Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Trudeau, Shaun <Trudeau.Shaun@epa.gov>; Albores, Richard <Albores.Richard@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: FW: Clean Water Rule - DOJ is asking about the draft Notice to Sixth Circuit

Deliberative Process / Ex. 5

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Neugeboren, Steven

Sent: Thursday, March 02, 2017 3:03 PM
To: OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: Clean Water Rule - Notice to Sixth Circuit for Kevin's book tonight

Deliberative Process / Ex. 5

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Wendelowski, Karyn
Sent: Thursday, March 02, 2017 1:51 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: FW: Clean Water Rule - Notice to Sixth Circuit

Deliberative Process / Ex. 5

~~Karyn Wendelowski~~

Attorney-Advisor

Water Law Office

Office of General Counsel

(202)564-5493

From: O'Donnell, Jessica (ENRD) [<mailto:Jessica.O'Donnell@usdoj.gov>]
Sent: Thursday, March 02, 2017 12:11 PM
To: Boyd, Milt HQ02 <milt.boyd@usace.army.mil>; Inkelas, Daniel HQ02 <Daniel.Inkelas@usace.army.mil>; David.R.Cooper@usace.army.mil; Bregman, Lauren R CIV USARMY HQDA OGC (US) <lauren.r.bregman.civ@mail.mil>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; 'Timbrook, Shahara T (Tennaile) MAJ USARMY USAR LEGAL CMD (US)' <shahara.t.timbrook.mil@mail.mil>; Catherine.b.roy.mil@mail.mil; Craig.r.schmauder.civ@mail.mil

Cc: Doyle, Andrew (ENRD) <Andrew.Doyle@usdoj.gov>; martha.mann@usdoj.gov; Dertke, Daniel (ENRD) <Daniel.Dertke@usdoj.gov>; Dona, Amy (ENRD) <Amy.Dona@usdoj.gov>; McCune, Devon Lehman (ENRD) <Devon.McCune@usdoj.gov>; Lundman, Robert (ENRD) <Robert.Lundman@usdoj.gov>; Neumann, Jennifer Scheller (ENRD) <Jennifer.Neumann@usdoj.gov>; Gunter, David (ENRD) <David.Gunter2@usdoj.gov>; McArdle, Kevin (ENRD) <Kevin.McArdle@usdoj.gov>

Subject: Clean Water Rule - Notice to Sixth Circuit

All –

Deliberative Process / Ex. 5

Thanks,

Jessica

Jessica O'Donnell

Senior Counsel for Appellate Matters

Environmental Defense Section

202.305.0851

To: Wendelowski, Karyn[wendelowski.karyn@epa.gov]
Cc: Minoli, Kevin[Minoli.Kevin@epa.gov]; Prabhu, Aditi[Prabhu.Aditi@epa.gov]; Loop, Travis[Loop.Travis@epa.gov]; Dennis, Allison[Dennis.Allison@epa.gov]
From: Grantham, Nancy
Sent: Mon 3/6/2017 8:44:46 PM
Subject: Re: Nancy-- Next steps on WOTUS?

All of them should get it thx ng

Sent from my iPhone

On Mar 6, 2017, at 3:43 PM, Wendelowski, Karyn <wendelowski.karyn@epa.gov> wrote:

Sounds fine to me. Carla sent me a pdf of the letter, so I can just send it on to the right person in OW (Travis and Allison, I assume that's Rose?).

Karyn

From: Grantham, Nancy
Sent: Monday, March 6, 2017 3:40 PM
To: Minoli, Kevin
Cc: Wendelowski, Karyn; Prabhu, Aditi
Subject: Re: Nancy-- Next steps on WOTUS?

Looping Travis loop and Allison Dennis - to get letter to get up in web

Sent from my iPhone

On Mar 6, 2017, at 3:36 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

Hi Karyn and Nancy- Now that I've signed the EPA letter to the AG and Army signed theirs, could we make those letters publicly available? There is nothing sensitive in them and they do not speak to any particular case, but they show the agency is following through on the direction in the Order, which I know is important to the Administrator. I am comfortable putting mine on the OW page with the FR notice and/or giving it out when requested if folks think that is a good idea.

I've CC'd Aditi and Carla in case folks need a copy and haven't seen it yet.

Thanks, Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Mar 6, 2017, at 2:21 PM, Grantham, Nancy <Grantham.Nancy@epa.gov> wrote:

Will do ..thanks ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Wendelowski, Karyn
Sent: Monday, March 06, 2017 11:26 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>
Subject: Re: Nancy-- Next steps on WOTUS?

Kevin -	Attorney Client / Ex. 5
Attorney Client / Ex. 5	

Karyn

From: Grantham, Nancy

Sent: Monday, March 6, 2017 10:57 AM
To: Wendelowski, Karyn; Minoli, Kevin
Subject: FW: Nancy-- Next steps on WOTUS?

Hi Karyn,

Would you be able to assist us in providing an answer for the highlighted question below?

Thanks ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Milbourn, Cathy
Sent: Thursday, March 02, 2017 5:02 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: Fwd: Nancy-- Next steps on WOTUS?

Wyn Hornbuckle never got back to me. Maybe they never connected. Would your OGC friend (forgot his name) have anything to provide?

Sent from my iPhone

Cathy Milbourn

Office of Media Relations

202-564-7849

202-420-8648

Begin forwarded message:

From: Annie Snider <asnider@politico.com>
Date: March 2, 2017 at 2:42:56 PM EST
To: "Milbourn, Cathy" <Milbourn.Cathy@epa.gov>
Subject: RE: Next steps on WOTUS?

Hi Cathy – were y'all still planning on sending me something?

From: Milbourn, Cathy [<mailto:Milbourn.Cathy@epa.gov>]
Sent: Wednesday, March 01, 2017 9:37 PM
To: Annie Snider <asnider@politico.com>
Subject: Re: Next steps on WOTUS?

Thanks Annie-- can you update your story?

Sent from my iPhone

Cathy Milbourn

Office of Media Relations

202-564-7849

202-420-8648

On Mar 1, 2017, at 9:27 PM, Annie Snider <asnider@politico.com> wrote:

Hi Cathy - my story is slated to run at about 5am tomorrow, so it'll probably come too late to get in this one, but I'll certainly be interested in the answer for potential follow ups. Thanks --

Sent from my iPhone

On Mar 1, 2017, at 9:09 PM, Milbourn, Cathy
<Milbourn.Cathy@epa.gov> wrote:

Hi Annie,

We are working on an answer for you.

Cathy

Sent from my iPhone

Cathy Milbourn

Office of Media Relations

202-564-7849

202-420-8648

On Mar 1, 2017, at 10:37 AM, Annie Snider
<asnider@politico.com> wrote:

Hi John & Cathy,

I am working on a story today (2pm deadline) about the mechanics of what happens next on WOTUS following yesterday's EO. In particular, I've got questions about the legal next steps. I've reached out to DOJ (email below) , but also thought I'd check in with y'all.

I'm on my cell today if it's easier to discuss: 646-250-1943.

Thanks!

Annie

From: Annie Snider
Sent: Wednesday, March 01, 2017 10:33 AM
To: 'Hornbuckle, Wyn (OPA)' <Wyn.Hornbuckle@usdoj.gov>
Subject: Next steps on WOTUS?

Hi Wyn – I'm trying to figure out what the next legal steps in

the WOTUS litigation are following yesterday's EO. At the Monday night White House briefing, a senior official said the EO "will instruct them to go to the attorney general to go to the court, the 6th circuit, and take appropriate steps to hold that case in abeyance while the evaluation occurs at the army corps and epa." But the 6th circuit has already put its proceedings on hold, so it seems like it would be the Supreme Court that would need to be asked to delay or moot proceedings

Alternately, it seems like there could still be a request for a voluntary remand, which I suppose could go to the 6th circuit for now.

Can you offer any clarity on this? I'm writing a story on the mechanics of what comes next today – 2pm deadline. Am on my cell if it's easier to discuss: 646-250-1943.

Thanks!

Annie

Annie Snider

Reporter

POLITICO

asnider@politico.com

646-250-1943 - cell

@AnnElizabeth18

To: Minoli, Kevin[Minoli.Kevin@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]
Cc: Peck, Gregory[Peck.Gregory@epa.gov]
From: Schmauder, Craig R SES (US)
Sent: Mon 3/6/2017 8:09:25 PM
Subject: Army Letter to AG Sessions re CWR EO 20170306
[OGC letter to AG re EO 2c 20170306.pdf](#)

Kevin, Karen and Greg,

For your information and records.

Respectfully -- Craig
Craig R. Schmauder, SES
Deputy General Counsel
Installations, Environment & Civil Works
(703) 695-2253

NOTICE: This message may contain information protected by the attorney-client, attorney work-product, deliberative-process, or other privilege. Do not disseminate without the approval of the Office of the General Counsel, Department of the Army. If you have received this message in error, please notify the sender immediately by email or telephone and delete this message.



GENERAL COUNSEL, THE DEPARTMENT OF THE ARMY
104 ARMY PENTAGON
WASHINGTON, DC 20310-0104

March 6, 2017

The Honorable Jeff Sessions
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

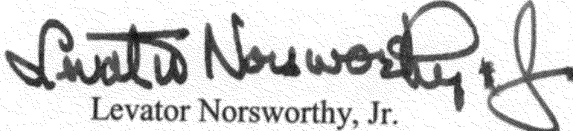
Dear Attorney General Sessions:

On February 28, 2017, the President signed an Executive Order entitled *Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule*. In response, the Administrator of the Environmental Protection Agency and the Senior Official Performing the Duties of the Assistant Secretary of the Army for Civil Works published in the Federal Register a "Notice of Intention to Review and Rescind or Revise the Clean Water Rule" (82 FR 12532).

Consistent with subsection 2(c) of the Executive Order, and on behalf of the Assistant Secretary of the Army for Civil Works, I am notifying you of this pending review so that as Attorney General you may inform any court of such review and take such measures, as you deem appropriate, concerning any such litigation pending the completion of further administrative proceedings related to the rule.

We look forward to continuing working collaboratively with your staff in determining the most appropriate measures the Department of Justice should take in litigation associated with the rule as a result of issuance of the Executive Order and Federal Register notice.

Sincerely,


Levator Norsworthy, Jr.
Senior Official Performing the Duties of the
General Counsel

To: Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Grantham, Nancy
Sent: Mon 3/6/2017 3:57:22 PM
Subject: FW: Nancy-- Next steps on WOTUS?

Hi Karyn,

Would you be able to assist us in providing an answer for the highlighted question below?

Thanks ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Milbourn, Cathy
Sent: Thursday, March 02, 2017 5:02 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: Fwd: Nancy-- Next steps on WOTUS?

Wyn Hornbuckle never got back to me. Maybe they never connected. Would your OGC friend (forgot his name) have anything to provide?

Sent from my iPhone

Cathy Milbourn

Office of Media Relations

202-564-7849

202-420-8648

Begin forwarded message:

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Date: March 2, 2017 at 2:42:56 PM EST
To: "Milbourn, Cathy" <Milbourn.Cathy@epa.gov>
Subject: RE: Next steps on WOTUS?

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Subject: Re: Next steps on WOTUS?

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Sent from my iPhone

Cathy Milbourn

Office of Media Relations

202-564-7849

202-420-8648

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Hi Cathy - my story is slated to run at about 5am tomorrow, so it'll probably come too late to get in this one, but I'll certainly be interested in the answer for potential follow ups. Thanks --

Sent from my iPhone

On Mar 1, 2017, at 9:09 PM, Milbourn, Cathy <Milbourn.Cathy@epa.gov> wrote:

Hi Annie,

We are working on an answer for you.

Cathy

Sent from my iPhone

Cathy Milbourn

Office of Media Relations

202-564-7849

202-420-8648

On Mar 1, 2017, at 10:37 AM, Annie Snider <asnider@politico.com> wrote:

Hi John & Cathy,

I am working on a story today (2pm deadline) about the mechanics of what happens next on WOTUS following yesterday's EO. In particular, I've got questions about the legal next steps. I've reached out to DOJ (email below), but also thought I'd check in with y'all.

I'm on my cell today if it's easier to discuss: 646-250-1943.

Thanks!

Annie

From: Annie Snider

Sent: Wednesday, March 01, 2017 10:33 AM

To: 'Hornbuckle, Wyn (OPA)' <Wyn.Hornbuckle@usdoj.gov>

Subject: Next steps on WOTUS?

Hi Wyn – I’m trying to figure out what the next legal steps in the WOTUS litigation are following yesterday’s EO. At the Monday night White House briefing, a senior official said the EO “will instruct them to go to the attorney general to go to the court, the 6th circuit, and take appropriate steps to hold that case in abeyance while the evaluation occurs at the army corps and epa.” But the 6th circuit has already put its proceedings on hold, so it seems like it would be the Supreme Court that would need to be asked to delay or moot proceedings

Alternately, it seems like there could still be a request for a voluntary remand, which I suppose could go to the 6th circuit for now.

Can you offer any clarity on this? I’m writing a story on the mechanics of what comes next today – 2pm deadline. Am on my cell if it’s easier to discuss: 646-250-1943.

Thanks!

Annie

Annie Snider

Reporter

POLITICO

asnider@politico.com

646-250-1943 - cell

@AnnElizabeth18

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
Cc: Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]
From: Wendelowski, Karyn
Sent: Wed 3/1/2017 1:03:10 AM
Subject: Fwd: CWR FR notice draft 2-28 12.25pm clean.docx

FYI

Karyn Wendelowski
Attorney Advisor
Office of General Counsel
(202) 564-5493

Begin forwarded message:

From: "Kwok, Rose" <Kwok.Rose@epa.gov>
Date: February 28, 2017 at 7:39:18 PM EST
To: "Wendelowski, Karyn" <wendelowski.karyn@epa.gov>
Cc: "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Downing, Donna" <Downing.Donna@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Loop, Travis" <Loop.Travis@epa.gov>
Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

From: Kwok, Rose

Sent: Tuesday, February 28, 2017 6:22 PM
To: Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Loop, Travis <Loop.Travis@epa.gov>
Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

From: Wendelowski, Karyn
Sent: Tuesday, February 28, 2017 6:21 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Loop, Travis <Loop.Travis@epa.gov>
Subject: Re: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

Karyn Wendelowski

Attorney Advisor

Office of General Counsel

(202) 564-5493

On Feb 28, 2017, at 6:20 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Kwok, Rose

Sent: Tuesday, February 28, 2017 6:06 PM

To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>

Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Loop, Travis <Loop.Travis@epa.gov>

Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

From: Kwok, Rose

Sent: Tuesday, February 28, 2017 5:51 PM

To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>

Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Wehling, Carrie
Sent: Tuesday, February 28, 2017 5:00 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

Carrie

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Kwok, Rose
Sent: Tuesday, February 28, 2017 4:57 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

From: Downing, Donna

Sent: Tuesday, February 28, 2017 4:55 PM

To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>

Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

Donna

From: Wehling, Carrie

Sent: Tuesday, February 28, 2017 4:40 PM

To: Kwok, Rose <Kwok.Rose@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>

Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Kwok, Rose
Sent: Tuesday, February 28, 2017 2:59 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

From: Campbell, Ann
Sent: Tuesday, February 28, 2017 12:52 PM
To: Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>

Subject: FW: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

From: Wendelowski, Karyn
Sent: Tuesday, February 28, 2017 12:34 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

Karyn Wendelowski

Attorney Advisor

Office of General Counsel

(202) 564-5493

<EXECUTIVE ORDER.pdf>

<CWR FR notice Prepublication Version.pdf>

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Wendelowski, Karyn
Sent: Tue 2/28/2017 1:50:27 AM
Subject: Re: Monday night version of the FR Notice

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 I'll let you know if I get a reply.

Karyn Wendelowski
Attorney Advisor
Office of General Counsel
(202) 564-5493

On Feb 27, 2017, at 8:25 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

Any chance you've heard anything? Standing here with Ryan Jackson.

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

From: Wendelowski, Karyn
Sent: Monday, February 27, 2017 7:07 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Re: Monday night version of the FR Notice

I've forwarded to Craig and asked for a sense of where they are.

I have one suggested edit (and apologize, I should have caught earlier) in the second paragraph - suggestion in bracket and underline.

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5

Karyn

From: Minoli, Kevin

Sent: Monday, February 27, 2017 6:36 PM

To: Neugeboren, Steven

Cc: Siciliano, CarolAnn; Wehling, Carrie; Wendelowski, Karyn; Simons, Andrew; Prabhu, Aditi; Packard, Elise; Shapiro, Mike; Campbell, Ann

Subject: RE: Monday night version of the FR Notice

Got it. Thanks!

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

From: Neugeboren, Steven

Sent: Monday, February 27, 2017 6:35 PM

To: Minoli, Kevin <Minoli.Kevin@epa.gov>

Cc: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>

Subject: Re: Monday night version of the FR Notice

There is a typo in the third paragraph "asking" should be "asked."

Sent from my iPhone

Steven Neugeboren

Associate General Counsel

United States Environmental Protection Agency

1200 Pennsylvania Ave. NW

Washington DC. 20460

202-564-5488

On Feb 27, 2017, at 6:21 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

All- Attached is a revised version of the notice that reflects policy input from the third floor. It is largely re-ordering some of the sentences, with a couple additional sentences added in. One of those sentences people will want to look at is the last sentence of the first paragraph. If there are necessary edits please send them back to me ASAP. You will notice that there are words in brackets in the text; those are meant

to reflect places where the text will ultimately follow the language in an executive order.

Carol Ann- I will send this to OP next and include you.

Karyn- Please send to Craig S and share any read out you get as to where the Corps is on getting to yes.

Thanks again for all of the help. Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

<CWR FR notice draft 2-27 5.45pm.docx>

To: Schnare, David[schnare.david@epa.gov]
Cc: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Rees, Sarah
Sent: Tue 2/28/2017 12:59:53 AM
Subject: Re: Draft FR Notice Re the Clean Water Rule

OFA is in Archives. In my experience a call from the Administrator is unlikely to help re: the need for co signature.

On Feb 27, 2017, at 7:54 PM, Schnare, David <schnare.david@epa.gov> wrote:

Is OFA in Archives or in an executive branch agency? Could a call from the Administrator make a call to fix their problem? Have we found someone at the corps to talk to?

Sent from my iPhone

On Feb 27, 2017, at 6:32 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

Samantha, Shannon, and Sarah- Attached is the latest version of a draft FR notice the Administrator would like to sign very close in time to the President's signing of an Executive Order regarding the Clean Water Rule. Folks from OGC and OW have had conversations with Sarah throughout the second half of the day about this, and Sarah has flagged that the Office of the Federal Register is unlikely to publish the notice unless the Corps of Engineers is also a signatory. We are working with them to see if that is possible, but in the meantime wanted the OP folks to have the latest version and the 3rd floor folks to hear that there is a logistical challenge. The actual publication process is an OP lead, so having connected folks I will yield the floor to OP if you want to provide more info or suggest a path forward.

Thanks, Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

<CWR FR notice draft 2-27 5.45pm.docx>

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
Cc: Rees, Sarah[rees.sarah@epa.gov]
From: Schnare, David
Sent: Tue 2/28/2017 12:54:40 AM
Subject: Re: Draft FR Notice Re the Clean Water Rule

Is OFA in Archives or in an executive branch agency? Could a call from the Administrator make a call to fix their problem? Have we found someone at the corps to talk to?

Sent from my iPhone

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Thanks, Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

<CWR FR notice draft 2-27 5.45pm.docx>

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Schwab, Justin
Sent: Tue 2/28/2017 12:15:08 AM
Subject: Re: Monday night version of the FR Notice

We discussed over phone but to my knowledge did not circulate text. I don't think I have standing to unilaterally authorize doing so. Given the short length we can easily do so tomorrow, however? Let me know if you disagree.

Sent from my iPhone

On Feb 27, 2017, at 7:13 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

See below. Did y'all share with DOJ? Thoughts on whether we can?

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Begin forwarded message:

From: "Wendelowski, Karyn" <wendelowski.karyn@epa.gov>
Date: February 27, 2017 at 7:06:59 PM EST
To: "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
Cc: "Siciliano, CarolAnn" <Siciliano.CarolAnn@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Simons, Andrew" <Simons.Andrew@epa.gov>, "Prabhu, Aditi" <Prabhu.Aditi@epa.gov>, "Packard, Elise" <Packard.Elise@epa.gov>, "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>
Subject: Re: Monday night version of the FR Notice

I've forwarded to Craig and asked for a sense of where they are.

I have one suggested edit (and apologize, I should have caught earlier) in the second paragraph - suggestion in bracket and underline.

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5

Karyn

From: Minoli, Kevin
Sent: Monday, February 27, 2017 6:36 PM
To: Neugeboren, Steven
Cc: Siciliano, CarolAnn; Wehling, Carrie; Wendelowski, Karyn; Simons, Andrew; Prabhu, Aditi; Packard, Elise; Shapiro, Mike; Campbell, Ann
Subject: RE: Monday night version of the FR Notice

Got it. Thanks!

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

From: Neugeboren, Steven
Sent: Monday, February 27, 2017 6:35 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Cc: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Shapiro, Mike

<Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Re: Monday night version of the FR Notice

There is a typo in the third paragraph "asking" should be "asked."

Sent from my iPhone

Steven Neugeboren

Associate General Counsel

United States Environmental Protection Agency

1200 Pennsylvania Ave. NW

Washington DC. 20460

202-564-5488

On Feb 27, 2017, at 6:21 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

All- Attached is a revised version of the notice that reflects policy input from the third floor. It is largely re-ordering some of the sentences, with a couple additional sentences added in. One of those sentences people will want to look at is the last sentence of the first paragraph. If there are necessary edits please send them back to me ASAP. You will notice that there are words in brackets in the text; those are meant to reflect places where the text will ultimately follow the language in an executive order.

Carol Ann- I will send this to OP next and include you.

Karyn- Please send to Craig S and share any read out you get as to where the Corps is on getting to yes.

Thanks again for all of the help. Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

<CWR FR notice draft 2-27 5.45pm.docx>

To: Minoli, Kevin[Minoli.Kevin@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]
Cc: Siciliano, CarolAnn[Siciliano.CarolAnn@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov];
Simons, Andrew[Simons.Andrew@epa.gov]; Prabhu, Aditi[Prabhu.Aditi@epa.gov]; Packard,
Elise[Packard.Elise@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Campbell,
Ann[Campbell.Ann@epa.gov]
From: Wendelowski, Karyn
Sent: Tue 2/28/2017 12:12:46 AM
Subject: Re: Monday night version of the FR Notice

sorry - also othe in paragraph starting "Due to concerns" should be other

From: Wendelowski, Karyn
Sent: Monday, February 27, 2017 7:06 PM
To: Minoli, Kevin; Neugeboren, Steven
Cc: Siciliano, CarolAnn; Wehling, Carrie; Simons, Andrew; Prabhu, Aditi; Packard, Elise; Shapiro, Mike;
Campbell, Ann
Subject: Re: Monday night version of the FR Notice

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Deliberative Process / Ex. 5 and Attorney Client

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Deliberative Process / Ex. 5

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To: Neugeboren, Steven

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Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

From: Neugeboren, Steven

Sent: Monday, February 27, 2017 6:35 PM

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Cc: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>

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United States Environmental Protection Agency

1200 Pennsylvania Ave. NW

Washington DC. 20460

202-564-5488

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Kevin S. Minoli

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Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

<CWR FR notice draft 2-27 5.45pm.docx>

To: Minoli, Kevin[Minoli.Kevin@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]
Cc: Siciliano, CarolAnn[Siciliano.CarolAnn@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Simons, Andrew[Simons.Andrew@epa.gov]; Prabhu, Aditi[Prabhu.Aditi@epa.gov]; Packard, Elise[Packard.Elise@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]
From: Wendelowski, Karyn
Sent: Tue 2/28/2017 12:06:59 AM
Subject: Re: Monday night version of the FR Notice

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Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

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Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

<CWR FR notice draft 2-27 5.45pm.docx>

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
Cc: Siciliano, CarolAnn[Siciliano.CarolAnn@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Simons, Andrew[Simons.Andrew@epa.gov]; Prabhu, Aditi[Prabhu.Aditi@epa.gov]; Packard, Elise[Packard.Elise@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]
From: Neugeboren, Steven
Sent: Mon 2/27/2017 11:35:18 PM
Subject: Re: Monday night version of the FR Notice

There is a typo in the third paragraph "asking" should be "asked."

Sent from my iPhone
Steven Neugeboren
Associate General Counsel
United States Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington DC. 20460
202-564-5488

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Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

<CWR FR notice draft 2-27 5.45pm.docx>

To: Wehling, Carrie[Wehling.Carrie@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]
Cc: Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Prabhu, Aditi[Prabhu.Aditi@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]; Simons, Andrew[Simons.Andrew@epa.gov]
From: Siciliano, CarolAnn
Sent: Mon 2/27/2017 10:14:57 PM
Subject: RE: FR Notice: OFR will say that Corps MUST sign
CWR FR notice for EPA and Corps 2.24.17 .docx

For people's files (and possible use): the FR notice I drafted for Corps and EPA signatures. It has all the boilerplate (top bits, POC, signature) and needs only the agreed-to content.

I will now send the 2 pm version of the EPA-only FR notice to Ann Campbell and OP.

I have a call in to OP regarding next steps for OFR.

Carol Ann Siciliano

Associate General Counsel

Cross-Cutting Issues Law Office

Office of General Counsel

U.S. Environmental Protection Agency

(202) 564-5489

siciliano.carolann@epa.gov

From: Wehling, Carrie
Sent: Monday, February 27, 2017 5:05 PM
To: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: RE: FR Notice: OFR will say that Corps MUST sign

Just so there's no confusion, Carol Ann is going to send the latest version, which is Kevin's 2 pm version, to Nicole and Ann for them to do the formatting/processing that needs to be done. So they will have the pen at this point.

Carol Ann will also resend the Army co-sign template to Karyn and me but to avoid confusion, think we should wait on moving that until we get the corrected version from OP/OW. Otherwise we will have too many versions flying around.

Whew.

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Wendelowski, Karyn

Sent: Monday, February 27, 2017 4:38 PM

To: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>

Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>

Subject: Re: FR Notice: OFR will say that Corps MUST sign

Deliberative Process / Ex. 5

Carol Ann

could you revise the version Kevin sent around for joint signature? That may help with Army.

Karyn Wendelowski

Attorney Advisor

Office of General Counsel

(202) 564-5493

On Feb 27, 2017, at 4:31 PM, Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov> wrote:

I just got off the phone with Sarah Rees and Nicole Owens at OP

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I'd like to send the draft FR notice to OP for their initial review. May I do that?

Finally, OP reminds us that they must have the signature package by 11 am Tuesday in order to ensure publication on Thursday (public inspection) and Friday (print). Therefore,

Deliberative Process / Ex. 5

Carol Ann Siciliano

Associate General Counsel

Cross-Cutting Issues Law Office

Office of General Counsel

U.S. Environmental Protection Agency

(202) 564-5489

siciliano.carolann@epa.gov

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 328

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 112, 116, 117, 122, 230, 232, 300, 302, and 401

[FRL-XXXX-XX-XXX]

Notice of Intention to Reconsider the Clean Water Rule

AGENCY: U.S. Army Corps of Engineers, Department of the Army, Department of Defense; and Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In accordance with the Presidential directive expressed in Executive Order XXXXX, the U.S. Environmental Protection Agency (EPA) announces its intention to reconsider the Clean Water Rule found at 33 CFR Part 328 and 40 CFR Parts 110, 112, 116, 117, 122, 230, 232, 300, 302 and 401.

FOR FURTHER INFORMATION CONTACT:

[INSERT APPROPRIATE OFFICE OF WATER CONTACT INFORMATION] *Sample:* John Goodin, Acting Director, Office of Wetlands, Oceans and Watersheds, Office of Water, Mail code xxx, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave NW., Washington, DC 20460; (202) 566-1373; goodin.john@epa.gov **OR** CWAwaters@epa.gov.

[INSERT APPROPRIATE CORPS CONTACT INFORMATION] *Sample:* Ms. Stacey Jensen, Regulatory Community of Practice (CECW-CO-R), U.S. Army Corps of Engineers, 441 G Street NW, Washington, DC 20314; (202) 761-5856; USACE_CWA_Rule@usace.army.mil.

SUPPLEMENTARY INFORMATION: On February XXX, 2017, the President of the United States issued an Executive Order entitled “XXXXXXXXXX.” That Executive Order directed EPA to [XXXXXX reconsider the] Clean Water Rule. By this notice, EPA announces its intention to reconsider that rule. The EPA has inherent authority to reconsider past decisions and to revise, replace or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Manufacturers Assn of the United States, Inc., et al. v. State Farm Mutual Automobile Insurance Co., et al.* 463 U.S. 29, 42 (1983).

[INSERT CONTENT HERE WITH APPROPRIATE REFERENCES TO THE CORPS]

To this end, EPA and the U.S. Army Corps of Engineers intend to propose revisions to the Clean Water Rule this spring, after performing analyses required by relevant Executive Orders and statutes. The EPA and the U.S. Army Corps of Engineers expect to announce the proposal and commence the public comment period around [INSERT DATE XXXX DAYS FROM DATE OF PUBLICATION].

Scott Pruitt,

Administrator.

XXXXXXXXXXXX,

[Acting] Assistant Secretary of the Army, (Civil Works), Department of the Army.

Dated: February XX, 2017.

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Schnare, David
Sent: Mon 2/27/2017 9:45:03 PM
Subject: Re: WOTUS: draft FR notice

What, you aren't done yet?

I think we need to be ready to launch tomorrow. Soooooooo.

dschnare

Sent from my iPhone

On Feb 27, 2017, at 4:34 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

How much time do I have to review?

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

From: Schnare, David
Sent: Monday, February 27, 2017 4:30 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Subject: FW: WOTUS: draft FR notice

Deliberative Process / Ex. 5 so Justin and Byron produced the attached. Can you live with this. (Note the bracketed material that will need to be dealt with once we have the EO)

dschnare

From: Schwab, Justin

Sent: Monday, February 27, 2017 4:18 PM

To: Jackson, Ryan <jackson.ryan@epa.gov>; Schnare, David <schnare.david@epa.gov>

Subject: WOTUS: draft FR notice

DRAFT DELIBERATIVE DOCUMENT

PRIVILEGED AND CONFIDENTIAL

Ryan and David,

Byron and I have tweaked the draft that Kevin circulated earlier this afternoon. Please find attached. Let us know if you want us to circulate this back to OGC.

Best,

Justin

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Schnare, David
Sent: Mon 2/27/2017 2:43:41 PM
Subject: RE: Clean Water Rule FR

We need to be sure it eventually gets through OEX

d

From: Minoli, Kevin
Sent: Monday, February 27, 2017 9:15 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: Clean Water Rule FR

He would sign a printed copy of the notice. We can have it ready as soon as we get or learn of the EO number so we can fill in those gaps. Steve and I will be down at 10:30.

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

From: Schnare, David
Sent: Monday, February 27, 2017 9:10 AM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Subject: RE: Clean Water Rule FR

Bring Steve, but it will not be on content. Just on getting the ANPRM out the door. What does the Administrator actually have to sign, and can we have that ready for a signing tomorrow?

I've blocked out 10:30 today on Ryan's calendar.

d.

From: Minoli, Kevin
Sent: Monday, February 27, 2017 9:07 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: Clean Water Rule FR

I've got a meeting with my team at 9:15 and one with Mike Shapiro as a first head's up at 10:00. Could we do 10:30? Is this just us or could I bring Steve?

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

From: Schnare, David
Sent: Monday, February 27, 2017 8:58 AM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Subject: Re: Clean Water Rule FR

How soon today can you meet with Ryan and me on WOTUS.

Sent from my iPhone

On Feb 26, 2017, at 9:05 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

Attorney Client Communication -- Privileged

Ryan- Attached is a draft FR notice announcing EPA's intention to reconsider,

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5 and Attorney Client

Please let me know if you want to discuss or if you would like me to present this to the Administrator.

Thanks, Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Office Line: 202-564-8040

Direct Dial: 202-564-5551

<Rulemaking Process and CWRule 2.24.17.docx>

<CWR FR notice draft.2.26.docx>

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Schnare, David
Sent: Mon 2/27/2017 2:10:06 PM
Subject: RE: Clean Water Rule FR

Bring Steve, but it will not be on content. Just on getting the ANPRM out the door. What does the Administrator actually have to sign, and can we have that ready for a signing tomorrow?

I've blocked out 10:30 today on Ryan's calendar.

d.

From: Minoli, Kevin
Sent: Monday, February 27, 2017 9:07 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: Clean Water Rule FR

I've got a meeting with my team at 9:15 and one with Mike Shapiro as a first head's up at 10:00. Could we do 10:30? Is this just us or could I bring Steve?

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

From: Schnare, David
Sent: Monday, February 27, 2017 8:58 AM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Subject: Re: Clean Water Rule FR

How soon today can you meet with Ryan and me on WOTUS.

Sent from my iPhone

On Feb 26, 2017, at 9:05 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

Attorney Client Communication -- Privileged

Ryan- Attached is a draft FR notice announcing EPA's intention to reconsider, withdraw, and replace the clean water rule.

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5 and Attorney Client

Please let me know if you want to discuss or if you would like me to present this to the Administrator.

Thanks, Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Office Line: 202-564-8040

Direct Dial: 202-564-5551

<Rulemaking Process and CWRule 2.24.17.docx>

<CWR FR notice draft.2.26.docx>

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Schnare, David
Sent: Mon 2/27/2017 1:58:11 PM
Subject: Re: Clean Water Rule FR

How soon today can you meet with Ryan and me on WOTUS.

Sent from my iPhone

On Feb 26, 2017, at 9:05 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

Attorney Client Communication -- Privileged

Ryan- Attached is a draft FR notice announcing EPA's intention to reconsider, withdraw, and replace the clean water rule.

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5 and Attorney Client

Please let me know if you want to discuss or if you would like me to present this to the Administrator.

Thanks, Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Office Line: 202-564-8040

Direct Dial: 202-564-5551

<Rulemaking Process and CWRule 2.24.17.docx>

<CWR FR notice draft.2.26.docx>

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Schnare, David
Sent: Mon 2/27/2017 2:08:13 AM
Subject: Re: Clean Water Rule FR

Nice.
d

Sent from my iPhone

On Feb 26, 2017, at 9:05 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

Attorney Client Communication -- Privileged

Ryan- Attached is a draft FR notice announcing EPA's intention to reconsider, withdraw, and replace the clean water rule.

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5 and Attorney Client

Please let me know if you want to discuss or if you would like me to present this to the Administrator.

Thanks, Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Office Line: 202-564-8040

Direct Dial: 202-564-5551

<Rulemaking Process and CWRule 2.24.17.docx>

<CWR FR notice draft.2.26.docx>

To: OGC Immediate Office Support[OGCFrontOfficeSupportStaff@epa.gov]
Cc: Simons, Andrew[Simons.Andrew@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Siciliano, CarolAnn
Sent: Fri 2/24/2017 10:06:39 PM
Subject: UPDATED VERSION For Kevin's Friday notebook: Regulatory Process
Rulemaking Process 2.24.17.docx

Please use this version of the Regulatory Process paper.

Carol Ann Siciliano

Associate General Counsel

Cross-Cutting Issues Law Office

Office of General Counsel

U.S. Environmental Protection Agency

(202) 564-5489

siciliano.carolann@epa.gov

From: Siciliano, CarolAnn
Sent: Friday, February 24, 2017 4:47 PM
To: OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>
Cc: Simons, Andrew <Simons.Andrew@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Carrie Wehling <Wehling.Carrie@epa.gov>; Karyn Wendelowski <wendelowski.karyn@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>
Subject: For Kevin's Friday notebook: Regulatory Process

This paper accompanies the draft FR notice sent by WLO for Kevin's weekend review. Could you put this document next to WLO's draft FR notice in Kevin's notebook?

Thank you.

Carol Ann Siciliano

Associate General Counsel

Cross-Cutting Issues Law Office

Office of General Counsel

U.S. Environmental Protection Agency

(202) 564-5489

siciliano.carolann@epa.gov

Rulemaking Process for Proposed & Final Rules

February 24, 2017

Topics Addressed in This Paper:

1. Publication in the Federal Register
2. Publication on EPA's Website
3. Internal EPA Rulemaking Process
4. Selected Executive Orders Relevant to Rulemaking
 - a. EO 12866
 - b. Federalism EO
 - c. Tribal Consultation EO
 - d. Reducing Regulation and Controlling Regulatory Costs ("2 for 1" EO)
5. Selected Statutes Relevant to Rulemaking
 - a. Regulatory Flexibility Act
 - b. Unfunded Mandates Reform Act
 - c. NEPA

Summary of Major Requirements for Proposed Rules

- Development of cost-benefit and other economic analyses (EO 12866)
- 90-day OMB review (EO 12866)
- Consultation with State, local and tribal governments, when appropriate (Federalism EO, Tribal Consultation EO, UMRA)
- Small business impact analysis and completion of Small Business Advocacy Review panel, unless EPA certifies no small business impacts (RFA)
- Identification of two existing regulations for elimination ("2 for 1" EO)

Publication in the Federal Register

After the Administrator or other authorized agency official signs a Federal Register Notice, the Office of Policy prepares it for submission to the Office of the Federal Register (OFR). Under OFR's regular publication schedule, which is set out at 1 CFR § 17.2(c), a notice received by OFR by 2 pm is "filed for public inspection" two business days later and published the following day (i.e., 3 days after receipt). The public inspection requirement derives from the Federal Register Act, and must precede publication in the Federal Register. 44 USC § 1503.

The Office of Policy informs us that the Director of the Office of the Federal Register may expedite this publication schedule at the request of the White House. In that event, a schedule might look like this:

- 10 am Monday: signature of Notice by the Administrator and transmission to the Office of Policy.
- By 2 pm Monday: the Office of Policy transmits the Notice to the Office of the Federal Register.

- 8:45 am Tuesday: OFR “files” the Notice for “public inspection.”
- Wednesday: OFR publishes the Notice in the Federal Register.

Publication on EPA’s Website

EPA is free to publish the signed Notice on its own website at any time. It need not wait for the Federal Register process. Once the Notice is published in the Federal Register, EPA customarily updates the website to provide a link to the Notice.

Internal EPA Rulemaking Process

The Office of Policy has established an internal agency process designed to help the Lead Rulemaking Office (e.g., the Office of Water) to consider views from other affected EPA offices and to comply with relevant statutes and Executive Orders. The process provides an opportunity for other offices to review, comment upon and concur in the proposed or final rule.

For example, several offices have relevant expertise or equities in the Clean Water Rule.

- Office of Research & Development: to ensure a credible scientific basis for the final rule
- Office of General Counsel: to ensure adequate legal authority and compliance with judicially reviewable procedural requirements
- Office of Policy: to ensure compliance with relevant Executive Orders and rulemaking statutes, including those requiring economic analyses
- The Office of Enforcement and Compliance and Assurance, because the rule affects the Agency’s enforcement program
- The Office of Land and Emergency Management, because the rule defines the scope of the oil spill prevention program under section 311 of the Clean Water Act.

The Administrator can waive the internal agency process at any time.

Selected Executive Orders

E.O. 12866 (Regulatory Planning and Review) & E.O. 13563 (Improving Regulation and Regulatory Review):

These Executive Orders govern centralized review of significant proposed and final agency actions by OMB’s Office of Information and Regulatory Affairs. A significant regulatory action is defined as “any regulatory action that is likely to result in a rule that may . . . (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.” Also included within the definition of significant regulatory action are rules that “(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

Unless OMB waives these requirements, for each significant proposed or final rule, EPA must:

- perform a cost-benefit analysis of the proposed and final rules;
- submit the draft Federal Notice and certain supporting documents, including cost-benefit and other economic analyses, to OMB for review; and
- provide OMB 90 days to complete its review.

Changes made in response to OMB recommendations are documented in the rulemaking docket.

OMB considered the Clean Water Rule to be a “significant regulatory action” under E.O. 12866.

E.O. 13132: Federalism

Executive Order 13132 applies to regulations that (1) have substantial direct effects on the states, (2) on the relationship between the national government and the States, or (3) on the distribution of power and responsibility among the various levels of government. Section 1(a).

For a rule “that imposes substantial direct compliance costs on the State and local governments, and that is not required by statute,” EPA must, among other things, consult with State and local officials “early in the process of developing the proposed regulation.” Section 6(b)(2)(A) (emphasis supplied). With respect to consultation, EPA must also publish in the preamble a “federalism summary impact statement” consisting of:

- a description of the extent of the agency’s prior consultation with State and local officials;
- a summary of the nature of their concerns and the agency’s position supporting the need to issue the regulation; and
- a statement of the extent to which the concerns of State and local officials have been met.

Section § 6(b)(2)(B).

EPA and the Army Corps determined that the proposed Clean Water Rule did not trigger the Federalism E.O. However, EPA and the Corps voluntarily undertook a federalism consultation, including a series of meetings and calls with state and local government representatives prior to proposal.

E.O. 13175: Consultation and Coordination with Indian Tribal Governments

This Executive Order recognizes the right of Indian tribes, as domestic dependent nations, to exercise inherent sovereign powers over their members and territory. It affirms that the United States works with Indian tribes on a government-to-government basis.

Similar to the Federalism EO, for a rule “that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute,” EPA

must, among other things, consult with tribal officials “early in the process of developing the proposed regulation.” Section 5(b)(2)(A) (emphasis supplied). With respect to consultation, EPA must also publish in the preamble a “tribal summary impact statement” consisting of:

- a description of the extent of the agency’s prior consultation with tribal officials;
- a summary of the nature of their concerns and the agency’s position supporting the need to issue the regulation; and
- a statement of the extent to which the concerns of tribal officials have been met.

Section 5(b)(2)(B).

EPA and the Army Corps determined that the proposed Clean Water Rule did not trigger the Tribal Consultation E.O. However, EPA and the Corps voluntarily undertook a federalism consultation, including a series of meetings and calls with tribal government officials prior to proposal.

“2 for 1” E.O. Reducing Regulation and Controlling Regulatory Costs

On January 30, 2017, the President issued a new Executive Order that, among other things, requires agencies to identify at least two existing regulations to be repealed whenever it proposes to promulgate a new regulation, unless prohibited by law. It also requires any new incremental costs associated with the new regulation to be offset by the elimination of existing costs associated with at least two prior regulations, to the extent permitted by law.

OMB has issued interim guidance to implement the 2 for 1 E.O. In its interim guidance, OMB suggests that agencies identify in the preamble to the proposed rule the two existing regulatory actions to be repealed. The OMB guidance also urges agencies to eliminate those regulations before or on the same schedule as the new regulatory action they offset.

Selected Relevant Statutes

This list excludes the statute(s) from which EPA derives authority to propose and promulgate the rule. It also excludes the Administrative Procedure Act, which establishes procedures for rulemaking and judicial review of final agency action.

Regulatory Flexibility Act

Unless EPA certifies that a proposed rule does not have a Significant Economic Impact on a Substantial Number of Small Entities (SISNOSE), the Regulatory Flexibility Act requires:

- a formal analysis of the potential adverse economic impacts on small entities;
- completion of a Small Business Advocacy Review Panel prior to proposal; and
- preparation of a Small Entity Compliance Guide to accompany the final rule.

EPA and the Army Corps made a “No SISNOSE certification” for the proposed Clean Water Rule. However, the agencies engaged in voluntary outreach to small entities and included a report on these efforts with the proposed rule.

Unfunded Mandates Reform Act

This act imposes certain requirements on proposed and final rules that impose an enforceable duty on State, local, or tribal governments, or the private sector (“Federal mandate”) that may result in the expenditure of funds by state, local or tribal governments, in the aggregate, (intergovernmental mandate) or by the private sector (private sector mandate) of \$100 million or more in any one year.

EPA must consult with elected government officers (or their designated employees with authority to act on their behalf) to provide meaningful and timely input in the development of proposed rules containing significant federal intergovernmental mandates.

For such rules, EPA must also prepare a written statement that includes:

- a cost-benefit assessment,
- a cost-benefit analysis;
- a description of the macro-economic effects, and
- a summary of the concerns raised by state, local or tribal governments and how they were addressed.

Before promulgating the rule, EPA must consider a reasonable number of regulatory alternatives and select the least costly, least burdensome, or most cost-effective option that achieves the objectives of the rule, or explain why the agency did not make such a choice. Under the APA, EPA must provide notice and solicit comment on these alternatives in order to consider them for final action.

EPA and the Army Corps determined that the proposed Clean Water Rule did not trigger the Unfunded Mandates Reform Act.

National Environmental Policy Act (NEPA)

Most of EPA’s actions are not subject to NEPA.

In the Clean Water Rule rulemaking, the agencies determined that the Corps was not subject to the requirements of NEPA because the rule was an action of EPA and, pursuant to section 511(c), exempt from NEPA. The agencies also determined that, under applicable case law, the cosigning of the rule by the Army did not alter the applicability of the exemption to the rule. Nonetheless, the Corps voluntarily prepared an Environmental Assessment concluding that the rule did not constitute a major federal action significantly affecting the quality of the human environment requiring the preparation of an Environmental Impact Statement.

To: Flynn, Mike[Flynn.Mike@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]; Jackson, Ryan (Inhofe)[Ryan_Jackson@ihofe.senate.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Kenny, Shannon[Kenny.Shannon@epa.gov]; Reeder, John[Reeder.John@epa.gov]
From: Schnare, David
Sent: Tue 2/21/2017 9:31:18 PM
Subject: FW: Petition to Reopen WOTUS Rule
[CEI-CWA-Comments.pdf](#)

I'm not sure how we process petitions, but here is one and there are others in my in box to follow.

dschnare

From: Marlo Lewis [mailto:Marlo.Lewis@cei.org]
Sent: Tuesday, February 21, 2017 3:44 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: Sam Kazman <Sam.Kazman@cei.org>; William Yeatman <William.Yeatman@cei.org>; Myron Ebell <Myron.Ebell@cei.org>
Subject: Petition to Reopen WOTUS Rule

Dear Sir:

Re: Petition for Rulemaking on EPA's definition of "waters of the United States"

This is a formal request that EPA reexamine its definition of "waters of the United States" through a new rulemaking proceeding.

When EPA first proposed its definition in 2014, CEI and others filed extensive comments in opposition. As discussed in detail in our comments (attached), EPA's definition violated both the underlying statutes and the constitutional limits on federal government power.

The final version of EPA's definition, issued in 2015, 79 FR 37,054 (June 29, 2015) did not differ in any essential respect from its original proposal. We submit that the basic objections raised in our comments are still valid. EPA's definition of the underlying terms are incredibly expansive, and give the agency a vast amount of unbounded discretion. It's hardly an exaggeration to say that EPA has transformed the term "waters of the United States" into "moistures of the United States."

Based on these objections, and on the mass of litigation already triggered by EPA's definition, we hereby petition this agency under 5 USC 553(e) to promptly commence a new rulemaking on this definition.

Comments of the Competitive Enterprise Institute, Americans for Competitive Enterprise, Americans for Tax Reform, Committee for a Constructive Tomorrow, Institute for Energy Research, National Center for Public Policy Research, Science and Environmental Policy Project, Small Business & Entrepreneurship Council, and Texas Public Policy Foundation on the U.S. Army Corps of Engineers and Environmental Protection Agency's Proposed Definition of "Waters of the United States" Under the Clean Water Act, 79 Fed. Reg. 22,188 (Apr. 21, 2014)

Docket Nos. EPA-HQ-OW-2011-0880, FRL-9901-47-OW

RIN 2040-AF30

November 14, 2014

ANDREW M. GROSSMAN
MARK W. DELAQUIL
BAKERHOSTETLER LLP
1050 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20036
(202) 861-1697
agrossman@bakerlaw.com

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The Competitive Enterprise Institute, Americans for Competitive Enterprise, Americans for Tax Reform, Committee for a Constructive Tomorrow, Institute for Energy Research, National Center for Public Policy Research, Science and Environmental Policy Project, Small Business & Entrepreneurship Council, and Texas Public Policy Foundation oppose the rule proposed by the Environmental Protection Agency and Army Corps of Engineers (“Agencies”) to redefine the term “Waters of the United States” for purposes of the Clean Water Act (“CWA”). The proposed rule dramatically expands the Agencies’ regulatory authority, to the detriment of property rights and of federalism. The proposed definition violates the Clean Water Act and exceeds the federal government’s authority under the Commerce Clause. Although greater clarity is required as to the boundaries of CWA jurisdiction, the Agencies should withdraw this proposal and go back to the drawing board to craft a new approach that conforms with governing law.

I. The Proposed Rule Expands the Agencies’ CWA Jurisdiction

The proposed changes to the definition of “waters of the United States” are, at their core, about the scope of the Agencies’ jurisdiction under the Clean Water Act. Sections 1311(a) and 1362(12), two of the principal provisions of the CWA, prohibit “the discharge of any pollutant by any person” into “navigable waters,” without a permit. “Navigable waters” is in turn defined as “*the waters of the United States*, including the territorial seas.” 33 U.S.C. § 1362(7) (emphasis added). As such, to expand the reach of the term “the waters of the United States” is to expand the scope of Section 1311(a)’s prohibition on the discharge of pollutants and, ultimately, the bounds of the Agencies’ CWA jurisdiction.

If one’s property falls under the definition of “the waters of the United States,” one must seek a permit from the EPA or Army Corps to make virtually any economically beneficial use of one’s property. 33 U.S.C. §§ 1342(a), 1344. This is because “pollutant” for CWA purposes includes far more than substances traditionally considered pollution, such as “sewage, garbage, . . . chemical wastes, biological materials, [and] radioactive materials.” 33 U.S.C. § 1362(6). Rather, “pollutant” also encompasses “heat,” “rock, sand, cellar dirt

and . . . agricultural waste discharged into water.” *Id.* Consequently, to undertake such projects as laying a foundation for a house, reinforcing a creek running through one’s yard with stones, or restoring a polluted site on a property designated, containing, or even abutting “waters of the United States,” one must subject oneself and one’s property to the Agencies’ procedures and discretion. *See, e.g., Sackett v. EPA*, 132 S. Ct. 1367 (2012); *United States v. Cundiff*, 555 F.3d 200 (6th Cir. 2009); *United States v. Hubenka*, 438 F.3d 1026 (10th Cir. 2006). This burden “is not trivial.” *Rapanos v. United States*, 547 U.S. 715, 721 (2006) (plurality opinion). As of a decade ago, “[t]he average applicant for an individual permit spends 788 days and \$271,596 in completing the process, and the average applicant for a nationwide permit spends 313 days and \$28,915—not counting costs of mitigation or design changes.” *Id.*

There are two ways to determine that a body of water or a parcel of land falls under the definition of “waters of the United States,” and thus triggers the aforementioned burdens. First, a body of water can fall under the bright-line, *per se* jurisdictional definitions. Alternatively, a body of water can be covered by the “other waters” jurisdictional category, which requires a fact-intensive, case-specific finding. The proposed rule significantly expands both of these jurisdictional categories.

A. Expansion of *Per Se* Jurisdiction

The proposed rule expands the *per se* jurisdictional category by “propos[ing] for the first time a regulatory definition of ‘tributary’” and by “propos[ing] for the first time to define an aspect of adjacency—‘neighboring’” so as to encompass more “than simply adjacent wetlands.” Definition of “Waters of the United States” Under the Clean Water Act, 79 Fed. Reg. 22,189, 22,198–99 (proposed Apr. 21, 2014).

1. New definition of “tributary”

The Agencies are proposing a definition of “tributaries” to avoid judicial scrutiny of their extra-statutory jurisdictional assertions. In recent years courts have rightly expressed skepticism about the Agencies’ attempts to go beyond their congressional authorization by,

inter alia, adding “tributaries” to the definition of “navigable waters” and then reading “tributaries” broadly. *See, e.g., Rapanos*, 547 U.S. at 726–27 (plurality opinion) (describing some of the Corps’ most “implausibl[e]” “sweeping assertions of jurisdiction” under the definition of “tributaries” in recent years); *Precon Dev. Corp., Inc. v. U.S. Army Corps of Engineers*, 633 F.3d 278, 294 (4th Cir. 2011) (expressing doubt that capacious definition of tributary will satisfy significant nexus test stated in Justice Kennedy’s *Rapanos* opinion).

According to the proposed rule, a “tributary” will be “a water physically characterized by the presence of a bed and banks and ordinary high water mark, . . . which contributes flow, either directly or through another water,” to waters over which the Agencies have proper jurisdiction. 79 Fed. Reg. at 22,272. Breaks in that flow, natural or man-made, do not cause a water to “lose its status as a tributary . . . so long as a bed and banks and an ordinary high water mark can be identified upstream of the break.” *Id.* The term “ordinary high water mark,” which is crucial to determining “tributary” under the proposed rule, is not itself clearly defined.¹

At first glance, the proposed definition appears to be little more than the recitation of the physical characteristics of a body of water—bed, banks, high water mark. Yet a closer look reveals that the proposed definition expands the concept of “tributaries” to include dry land over which water occasionally flows. As the explanatory notes accompanying the proposed rule make explicit, “[a] bed and banks and ordinary high water mark . . . can be created by ephemeral, intermittent, and perennial flows.” *Id.* at 22,202. And such ephemeral

¹ To the extent that the Agencies intend to elucidate the meaning of “ordinary high water mark,” or other central terms, outside of this rulemaking, that would only confirm that the proposed rule is incomplete. Attempts to define such terms through guidance, blog posts, etc., would be an improper attempt to circumvent the requirements of the Administrative Procedures Act.

and intermittent waters need not contribute flow directly to navigable waters, so long as some circuitous route can be traced through a series of other waters. Thus, if the Agencies can show, for example, that the runoff in an ordinarily dry drainage ditch at the side of the road leads, at times of extreme weather, to other ditches that themselves eventually feed into navigable waters, the Agencies can claim that that ditch is a “water of the United States.”

2. Re-definition of “adjacency”

Wrapping ambiguity in vagueness under the pretense of providing “clarity,” the Agencies propose a definition of “adjacent” that gives them nearly boundless discretion. The Agencies claim that they are only seeking to “further clarify the meaning of ‘adjacent’ by defining one of its elements, ‘neighboring.’” *Id.* at 22,193. However, the proposed definition of this constitutive “element” is so broad that it totally eclipses the original term. Specifically, the proposed definition of “neighboring” introduces into CWA regulations the concept of indefinitely large neighboring “areas,” all waters inside of which come under the Agencies’ jurisdiction. Because all waters inside these neighboring “areas” need not themselves be neighboring the core navigable water, the Agencies can use the definition to assert jurisdiction over waters that are not actually adjacent, bordering, or even near those waters that do fall within the Agencies’ proper jurisdiction.

The proposed rule defines “neighboring” as all “waters located within the riparian area or floodplain of a water” over which the Agencies have proper jurisdiction, “or waters with a shallow subsurface hydrologic connection or confined surface hydrologic connection to such a jurisdictional water.” *Id.* at 22,273. “Riparian areas” are further defined as the entire “transitional *areas* between aquatic and terrestrial ecosystems that influence the exchange of energy and materials between those ecosystems.” *Id.* (emphasis added). And “floodplains” are defined in similarly expansive terms: “*area[s]* bordering inland or coastal waters that [were] formed by sediment deposition from such water under present climatic conditions and [are] inundated during periods of moderate to high water flows.” *Id.* (emphasis added).

How expansive is the area between ecosystems that “influence[s] the exchange of energy and materials” between them? Do “present climatic conditions” encompass the last decade? The last century? The period since the last ice age? How often does an area have to experience a flood to fall within the floodplain? Once a decade, or once a century? The regulation answers none of these questions.

B. Expansion of Case-Specific Jurisdiction

The Agencies, concerned that the current list of types of “other waters” covered by existing CWA regulations “has been incorrectly read as an exclusive list,” are proposing to do away with the enumerated list entirely. *Id.* at 22,211. In its place, the Agencies suggest a supposedly “case specific” analysis. In truth, however, the Agencies seek to replace the list of “other waters” with a *regional* “significant nexus” test. Under the proposed rule, the Agencies would have jurisdiction over all “water[s], including wetlands, [that] either alone or *in combination with other similarly situated waters in the region . . . significantly affect[] the chemical, physical, or biological integrity of a water*” over which the Agencies have proper jurisdiction. *Id.* at 22,274 (emphasis added).

This definition of “other waters” belies the claim that the Agencies intend to conduct case-specific analyses. But by how much is not clear until one considers how broad the category of “region” they propose is. “Region” is defined as “the watershed that drains to the nearest” currently or potentially navigable water, interstate water or wetland, or territorial sea. *Id.* Any place that is contained in the watershed of any of those waters falls into a CWA region. Needless to say, such regions can be enormous: the Chesapeake Bay Watershed, for instance, stretches north of Cooperstown and south of Richmond, covering all of Maryland and most of Pennsylvania and Virginia.

Within these regions, the Agencies can conduct a single “significant nexus” analysis over all waters that “perform similar functions” and are “sufficiently close together . . . that they can be evaluated as a single landscape unit with regard to their effect on the chemical,

physical, or biological integrity” of the “water of the United States.” *Id.* What, precisely, a “single landscape unit” is, and how broadly an “effect” is defined, is unclear.

II. The Proposed Rule Exceeds the Agencies’ Statutory Authority Under the Clean Water Act

The proposed rule continues “the immense expansion of federal regulation of land use that has occurred under the Clean Water Act—without any change in the governing statute.” *Rapanos*, 547 U.S. at 722 (plurality opinion). The proposed rule adopts a view of the Agencies’ jurisdiction that is, as the plurality opinion in *Rapanos* described, basically unbounded:

The Corps has also asserted jurisdiction over virtually any parcel of land containing a channel or conduit—whether man-made or natural, broad or narrow, permanent or ephemeral—through which rainwater or drainage may occasionally or intermittently flow. On this view, the federally regulated “waters of the United States” include storm drains, roadside ditches, ripples of sand in the desert that may contain water once a year, and lands that are covered by floodwaters once every 100 years. Because they include the land containing storm sewers and desert washes, the statutory “waters of the United States” engulf entire cities and immense arid wastelands. In fact, the entire land area of the United States lies in some drainage basin, and an endless network of visible channels furrows the entire surface, containing water ephemerally wherever the rain falls. Any plot of land containing such a channel may potentially be regulated as a “water of the United States.”

Id.

Accordingly, the proposed rule exceeds the limits of the Agencies’ statutory jurisdiction for the reasons stated in the plurality opinion. “[T]he waters of the United States’ include only relatively permanent, standing or flowing bodies of water. The definition refers to water as found in ‘streams,’ ‘oceans,’ ‘rivers,’ ‘lakes,’ and ‘bodies’ of water ‘forming geographical features.’ All of these terms connote continuously present, fixed bodies of water, as opposed to ordinarily dry channels through which water occasionally or intermittently flows.” *Id.* at 732–33 (footnote and citation omitted). Yet the proposed rule sweeps up so-called “tributaries” that are, at most, the sites of ephemeral and intermittent flows. Likewise, it sweeps up sites that lack even ephemeral or intermittent flows merely because they are

within the “region” of actual bodies of water. The Agencies, however, lack the statutory authority to assert jurisdiction over “transitory puddles or ephemeral flows of water,” much less land that lacks even those water features. *Id.* at 733. Accordingly, the proposed rule is *ultra vires*.

As the plurality opinion explains, this broad assertion of jurisdiction also directly conflicts with the CWA’s definition of “point source.” *See id.* at 735–36. A “point source” is “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). The Act also defines “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source.” § 1362(12)(A). Thus, “point sources” and “navigable waters” must comprise, under ordinary principles of statutory interpretation, separate and distinct categories. Yet the proposed rule depends on a reading of “navigable waters” that encompasses all or nearly all point sources. Because that reading is precluded by the statutory text’s separation of “navigable waters” and “point sources,” the proposed rule is *ultra vires*.

Were there any doubt regarding these statutory questions, it is resolved by the CWA’s statement that it is “the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, [and] to plan the development and use (including restoration, preservation, and enhancement) of land and water resources” § 1251(b). The Agencies’ broad reading of “waters of the United States” to assert control over the development and use of land in entire watershed “regions” is flatly inconsistent with the Act’s stated policy and therefore must be rejected. That, in turn, renders the proposed rule *ultra vires*.

III. The Proposed Rule Violates Even the Broadest Reading of *Rapanos*

A. *Rapanos*'s Two-Opinion Majority

Rapanos has no single controlling opinion. Rather, the majority was split between a four-Justice plurality authored by Justice Scalia and a special concurrence (i.e., concurring in the judgment only) by Justice Kennedy.

Both the four-Justice plurality and Justice Kennedy's concurrence agree that the terms "navigable waters" and "waters of the United States" in the CWA encompass more than waters that are either navigable in fact or potentially navigable. *Rapanos* at 730–31, 767. They diverge, however, when it comes to determining which non-navigable waters fall under the definition of "the waters of the United States." As described above, the plurality opinion correctly states a practically administrable test based on the physical characteristics of the bodies of water in question.

By contrast, Justice Kennedy's concurrence introduces a "significant nexus" test for CWA jurisdiction. This test, he writes, should to be used to determine which non-navigable-in-fact waters fall under the definition of "waters of the United States." Noting that "Congress enacted the law to 'restore and maintain the chemical, physical, and biological integrity of the Nation's waters,'" Justice Kennedy concludes that Congress gave the Agencies authority over both the nation's waters and those areas that are critical to the integrity of the nation's waters. *Id.* at 779 (Kennedy, J., concurring) (quoting 33 U.S.C. § 1251(a)). He insists that the Agencies demonstrate that any non-navigable waters they seek to regulate have a significant hydrologic connection, or "significant nexus," to the nation's navigable waters.

Obvious though it may be, it bears emphasizing: the "significant nexus" test Justice Kennedy proposes requires that the nexus be, well, *significant*. To regulate waters beyond those immediately adjacent to the nation's waters, the Agencies must demonstrate a hydrologic nexus that is more than "speculative or insubstantial." *Id.* at 780 (Kennedy, J., concurring). "Given the potential overbreadth of the [Agencies'] regulations, this showing is necessary to avoid unreasonable applications of the statute." *Id.* at 782 (Kennedy, J., concurring).

As a consequence, Justice Kennedy's test would preclude the Agencies from "regulat[ing] drains, ditches, and streams remote from any navigable-in-fact water and carrying only minor water volumes toward it." *Id.* at 780–81 (Kennedy, J., concurring).

B. The Agencies Incorrectly Take the Broadest Possible View of *Rapanos*

The EPA has taken the official position that *both* the four-Justice plurality and Justice Kennedy's concurrence form the controlling legal test in *Rapanos*. Env'tl. Prot. Agency, *Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States*, at 3 (Dec. 2, 2008), available at http://water.epa.gov/lawsregs/guidance/wetlands/upload/2008_12_3_wetlands_CWA_Jurisdiction_Following_Rapanos120208.pdf (last visited Nov. 12, 2014). In other words, in the agency's view, "regulatory jurisdiction under the CWA exists over a water body if either the plurality's or Justice Kennedy's standard is satisfied." *Id.*

The proposed rule, however, scrupulously avoids stating which opinion (or opinions) the Agencies believe to be controlling. At the least, the Agencies appear to have adopted the position that the entirety of Justice Kennedy's concurrence may be relied upon because it received the support of "a majority of justices in *Rapanos*." 79 Fed. Reg. at 22,260. But the "*Marks* Rule," provides that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." *Marks v. United States*, 430 U.S. 188, 193 (1977). There is no basis to describe the entirety of Justice Kennedy's concurrence as "that position taken by those Members who concurred in the judgments on the narrowest grounds." *Id.* Instead, under proper application of *Marks*, "the concurring opinion of Justice Kennedy, and the grounds of agreement between Justice Kennedy and the plurality opinion authored by Justice Scalia, form the holding of the Court." Hearing Concerning Recent Supreme Court Decisions Dealing with the Clean Water Act Before the S. Subcomm. on Fisheries, Wildlife and Water of the S. Comm. on Environment and Public Works, 109th Cong. 4 (2006) (written

statement of Jonathan H. Adler), *available at* http://epw.senate.gov/109th/Adler_Testimony.pdf. This means, in general, that mere “adjacency to a *nonnavigable* tributary by itself will not be enough to establish jurisdiction.” *Id.* at 5. It also means that “tributaries” cannot be interpreted to “allow[] for the assertion of jurisdiction with little regard for the actual connections between a given ditch, swale, gully, or channel with actual navigable waters.” *Id.* The proposed rule violates these principles, particularly in its expansion of *per se* jurisdiction.

In relying on the entirety of Justice Kennedy’s opinion, the Agencies appear to count the “votes” and give weight to the reasoning of the Court’s dissenting members. But justices who decline to join the Court’s holding regarding the resolution of an issue in a case do not shape that holding—a dissent or concurrence (as opposed to a special concurrence), after all, carries no precedential weight. Instead, as *Marks* holds, it is only the positions of “those Members *who concurred in the judgments*” that are relevant. 430 U.S. at 193 (emphasis added). Accordingly, *Rapanos* must be interpreted only on the basis of the plurality opinion and Justice Kennedy’s special concurrence, not on the basis of a prediction about the way that the dissenting justices may vote in some hypothetical future case. In other words, the Agencies may not assume that they may justify their actions under *either* opinion; instead, they must accept, *at the least*, that the kinds of assertions of jurisdiction rejected in *Rapanos* are off limits to them. And to be on legal *terra firma*, they should justify their assertion of authority under *both* the plurality’s approach and Justice Kennedy’s.²

² In addition, the Agencies’ apparent reliance on the reasoning of one opinion or the other to support different aspects of their proposal is incoherent, given the two opinions’ very disparate approaches to interpretation of the CWA’s jurisdictional scope. This failure to settle on a single, coherent interpretation is fatal to the Agencies’ proposal.

This dispute is far from academic because central features of the proposed rule could only be supported under Justice Kennedy’s concurrence. For example, the proposed definition of “tributaries” is undoubtedly irreconcilable with the plurality opinion, for the plurality made clear that “tributaries” are not themselves “waters of the United States.” *Rapanos*, 547 U.S. at 743–45 (arguing that tributaries can be “point sources” conveying pollution at the place where they enter “waters of the United States,” but not “waters of the United States” themselves). Justice Kennedy’s concurrence, on the other hand, finds that some “tributaries” can potentially be “waters of the United States,” even though earlier definitions of “tributaries” fail the “significant nexus” test. *Id.* at 781–82 (Kennedy, J., concurring).

Yet other features of the proposed rule could only, or more easily, be justified under the plurality’s approach. One example is an aspect of the proposed definition of “adjacent.” Because the plurality opinion does not require a “significant nexus” showing, only surface connection, it may allow regulation of “wetlands (however remote) possessing a surface-water connection with a continuously flowing stream (however small).” *Id.* at 776 (Kennedy, J., concurring). The plurality opinion may therefore support the “confined surface hydrologic connection” part of the new “neighboring” definition, while Justice Kennedy’s approach would seem to require specific showings that the “*per se*” nature of the proposed rule does not.

In sum, only by cobbling together the aspects of each *Rapanos* opinion that they favor can the Agencies find even arguable legal support for all aspects of their proposal. But agencies do not get to pick and choose from among competing and irreconcilable legal approaches. Because the proposed rule cannot be supported under one or the other interpretative approach in *Rapanos*—much less the common ground between the two—it is *ultra vires*.

C. The Proposed Rule Violates Even the Broadest Reading of *Rapanos*

Even if a court were to adopt the Agencies’ implicit position that the four-Justice plurality and Justice Kennedy’s concurrence together form the controlling *Rapanos* test—that is, that an assertion of jurisdiction that satisfies either standard is permissible—the proposed

rule would still fail. The proposed rule, with its expansive definitions of tributaries and adjacency, and its regional “other waters” analysis, covers numerous bodies of water and swaths of land that cannot be justified under either the four-Justice plurality opinion or Justice Kennedy’s concurrence. As such, the proposal exceeds the Agencies’ statutory authority under the Clean Water Act.

The proposed rule encompasses areas possessing neither “relatively permanent, standing or flowing bodies of water” with a “continuous surface connection” to navigable waters, nor a “significant nexus” to “waters that are or were navigable in fact or that could reasonably be made so.” *Rapanos*, 547 U.S. at 732, 757, 759. For example, a *per se* rule recognizing tributaries as “waters of the United States” is not permitted under the plurality opinion, because the plurality requires a showing that the tributary actually conveys pollution at the point it reaches the navigable waters. *Id.* at 743 (plurality opinion). And the *per se* rule would also not be permitted by Justice Kennedy’s concurrence, because it captures “streams remote from any navigable-in-fact water and carrying only minor water volumes toward it.” *Id.* at 781 (Kennedy, J., concurring).

The proposed definitions of “adjacency” and “other waters” also violate even the most generous reading of *Rapanos*. “Adjacency” with its “riparian area” and “floodplain” categories, and “other waters” with its regional analysis, each encompass land and waters not at all bordering proper “waters of the United States,” much less possessing a “continuous surface connection.” *Id.* at 757. They thus cannot be justified under the plurality opinion. And they also violate Justice Kennedy’s concurrence. Given that the concurrence expressed grave doubts about previous efforts by the Agencies, using the narrower definition of “adjacency,” to regulate “wetlands adjacent to tributaries . . . little more related to navigable-in-fact waters than were the isolated ponds held to fall beyond the Act’s scope in *SWANCC*,” it is inconceivable that the concurrence can be reconciled with a definition of adjacency that includes all waters in “riparian areas.” *Id.* at 781–82 (Kennedy, J., concurring).

Nor does Justice Kennedy's concurrence support the proposed rule's "in the region" analysis. It does not directly answer that question because it was "neither raised by these facts nor addressed by any agency regulation." *Id.* at 782 (Kennedy, J., concurring). But Justice Kennedy does suggest that this approach is impermissible. Justice Kennedy would require the Corps to establish that wetlands adjacent to nonnavigable tributaries "significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable.'" *Id.* at 780 (Kennedy, J., concurring). By contrast, the proposed rule allows the agencies to presume that this is the case, without making any specific determination. Accordingly, this approach cannot be supported by Justice Kennedy's reasoning.

In sum, even if the Agencies are correct that they may rely on either of the two opinions that comprise the *Rapanos* majority, their proposed rule is still *ultra vires* because central aspects of it fail to satisfy either standard.

IV. The Proposed Rule Exceeds the Scope of Congress's Commerce Clause Power

In the background of the Court's decisions in *Rapanos* and *Solid Waste Agency of Northern Cook County. v. Army Corps of Engineers*, 531 U.S. 159 (2001) (*SWANCC*), is the question of the extent of Congress's regulatory authority under the Commerce Clause. In both cases, the Court interpreted the CWA so as to avoid reaching this constitutional question. But the broad reach of the proposed rule—which purports to assert federal regulatory authority over development adjacent to "tributaries" that are dry and on lands that are merely in the "region" of actual waters—not only exceeds the Agencies' statutory authority but also relies on an interpretation of the Act that exceeds Congress's Commerce Clause authority.

In *SWANCC*, the government sought to defend the Corps' "Migratory Bird Rule," which asserted CWA jurisdiction over intrastate waters that provide habitat for migratory birds, on the basis that "the protection of migratory birds is a 'national interest of very nearly the first magnitude'" due to the amount of money spent on bird-related recreation and therefore well within "Congress' power to regulate intrastate activities that 'substantially affect' interstate commerce." 531 U.S. at 173. The Court, however, had its doubts: "For ex-

ample, we would have to evaluate the precise object or activity that, in the aggregate, substantially affects interstate commerce. This is not clear” *Id.* As it explained, “[p]ermitting respondents to claim federal jurisdiction over ponds and mudflats falling within the ‘Migratory Bird Rule’ would result in a significant impingement of the States’ traditional and primary power over land and water use.” *Id.* at 174. Whether or not it was within Congress’s power to so impinge on the States’ traditional authority, the Court assumed that Congress would have made some “clear statement” “expressing a desire to readjust the federal-state balance in this manner” before undertaking an action so fraught with constitutional doubt. *Id.* Accordingly, it “read the statute as written to avoid the significant constitutional and federalism questions raised by respondents’ interpretation.” *Id.*

Likewise, the plurality in *Rapanos* recognized that “[r]egulation of land use, as through the issuance of the development permits . . . , is a quintessential state and local power” and that “[t]he extensive federal jurisdiction urged by the Government would authorize the Corps to function as a *de facto* regulator of immense stretches of intrastate land.” 547 U.S. at 738. It too applied the avoidance canon, reasoning that it would “ordinarily expect a ‘clear and manifest’ statement from Congress to authorize an unprecedented intrusion into traditional state authority.” *Id.* To do otherwise would force the Court to confront “difficult questions about the ultimate scope of [Congress’s commerce] power.” *Id.*

Presumably a federal court could and would apply the same avoidance canon and clear statement rule in rejecting the interpretation set forth in the proposed rule. But that does not mean, of course, that the Agencies’ interpretation can be supported under the Constitution—to the contrary, the application of the avoidance canon in both *SWANCC* and *Rapanos* suggests substantial doubt on that score, which is confirmed by application of basic Commerce Clause principles.

In particular, the Supreme Court has “always recognized that the power to regulate commerce, though broad indeed, has limits.” *Maryland v. Wirtz*, 392 U.S. 183, 196 (1968). The assertion of federal authority to regulate basic land-use requirements in entire regions of

the nation—and perhaps the entire region, if the Agencies’ approach is carried out to its logical end—“would erode those limits, permitting Congress to reach beyond the natural extent of its authority, ‘everywhere extending the sphere of its activity and drawing all power into its impetuous vortex.’” *NFIB v. Sebelius*, 132 S. Ct. 2566, 2589 (2012) (Roberts, C.J.) (quoting *The Federalist* No. 48, at 309 (J. Madison)). For that reason alone, the Agencies’ interpretation must be rejected.

More specifically, the Agencies’ interpretation cannot be supported as a regulation of activities “substantially related” to interstate commerce. The Supreme Court has “identified three broad categories of activity that Congress may regulate under its commerce power”: Congress may regulate “the use of the channels of interstate commerce,” “the instrumentalities of interstate commerce,” and “those activities having a substantial relation to interstate commerce, *i.e.*, those activities that substantially affect interstate commerce.” *United States v. Lopez*, 514 U.S. 549, 558–59 (citations omitted). The regulation of land and water resources that does not involve navigable waterways, if it is within Congress’s authority at all, would have to fit within the third category.

But the Court’s decisions in *Lopez* and *United States v. Morrison*, 529 U.S. 598 (2000), prohibit the federal government from regulating noneconomic intrastate activities that have only an attenuated connection to interstate commerce. As in *Lopez*, the statute at issue here “by its terms has nothing to do with ‘commerce’ or any sort of economic enterprise.” 514 U.S. at 561. As relevant, the CWA prohibits discharges into “the waters of the United States” without a permit issued by the federal government. This prohibition, as with the firearm-possession statute in *Lopez* and the civil remedy for the victims of gender-motivated violence in *Morrison*, does not directly regulate commercial activity. While a property owner may certainly hire a contractor to apply fill to a portion of his property, the prohibition does not address that commercial transaction and applies equally to the property owner doing the work himself—or, for that matter, to a toddler with a bucket and shovel tossing dirt into a puddle. The CWA also lacks an express “jurisdictional element which would ensure,

through case-by-case inquiry, that the [regulated activity] affects interstate commerce.” *Id.* Thus, the prohibition itself is not a regulation of economic activity. “[T]hus far in our Nation’s history [the Supreme Court’s] cases have upheld Commerce Clause regulation of intrastate activity only where that activity is economic in nature.” *Morrison*, 529 U.S. at 613. On that basis, a court would be constrained to reject the Agencies’ interpretation of the CWA as exceeding Congress’s Commerce Clause power.

Legislative history likewise provides no support for the argument that Congress considered “the effects upon interstate commerce” of the CWA’s prohibitions. *See Lopez*, 514 U.S. at 562–63. Indeed, the Supreme Court considered and rejected in *SWANCC* the argument “that Congress intended to exert anything more than its commerce power over navigation.” 531 U.S. at 168 n.3.

In sum, the Agencies’ interpretation must be rejected because it “would effectually obliterate the distinction between what is national and what is local.” *Lopez*, 514 U.S. at 557 (internal quotation marks omitted).

V. The Proposed Rule Is an Effort by the Agencies To Supplant State Law and Replace the Policy Choices of the People Most Directly Affected by Regulations and Waters with the Policy Preferences of Federal Bureaucrats

The proposed rule is a thinly veiled attempt by the Agencies to undermine democratically enacted state and local laws and policies. If finalized, the rule will replace the judgments of those most knowledgeable of local needs—who also happen to be those most directly burdened by clean water regulations—with the wishes and desires of federal bureaucrats. Such a usurpation of states’ rights violates the CWA’s scheme of cooperative federalism and thus the CWA itself.

A. The Proposed Rule Seeks To Supplant State and Local Laws with Federal Control

The Agencies claim that the proposed rule “[h]elps states protect their waters.” United States Environmental Protection Agency, *Waters of the United States*, available at <http://www2.epa.gov/uswaters> (last visited Nov. 12, 2014). But by “states,” the Agencies

mean their state-level bureaucratic counterparts. And the “help” the Agencies think States need is help circumventing democratically enacted statutory limitations on the state bureaucrats’ discretion. Indeed, one need look no further than the title of the source the Agencies cite to see their true intentions: *State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act* (Environmental Law Institute, May 2013), available at <http://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf> (last visited Nov. 12, 2014) (“*State Constraints*”).

Examining the “state-imposed limitations” that the Agencies find so troubling is revealing. These limitations, as the *State Constraints* report chronicles, come in two forms: “no more stringent than” laws and private property-rights laws. “No more stringent than” laws are “laws or policies that limit the authority of state agencies to protect waters more stringently than would otherwise be required under the federal Clean Water Act.” *State Constraints*, at 11. Evidently twenty-eight States have determined that federal clean water regulations as they exist without the Agencies’ attempt at jurisdictional expansion are sufficient—or, indeed, more than sufficient—to protect their waters, and have adopted “no more stringent than” laws. *Id.*

Laws protecting rights to private property, the existence of which the Agencies also seem to regret, are “legal protections, often in the form of ‘private property rights acts,’ for the benefit of property owners whose rights are affected by state government action—often including local government action.” *Id.* at 20. The principal form such laws take is “assessment provisions,” which “require state government officials to assess their actions for potential constitutional takings implications, or for other impacts on private property rights.” *Id.* at 24. The other predominant form of laws protecting rights to private property is “compensation/prohibition” provisions, which “require[] state agencies to pay certain private property owners who successfully claim that government regulation has resulted in a devaluation of their property.” *Id.* at 21. All told, twenty-two States have adopted property-based limitations on the authority of regulatory agencies, often through voter ballot initiatives.

The Agencies, deeming bureaucratic discretion superior to the express will of the democratic populous, are proposing this rule to supplant such state and local laws. As shown below, that runs contrary to the policies that Congress sought to further in enacting the CWA.

B. The Agencies’ Attempt To Supplant State Authority Contravenes the CWA’s Policy of Deference to States

The opening section of the CWA in which Congress specifies the statute’s goals and purposes clearly adopts a scheme that respects the rights of States. “It is the policy of the Congress,” the CWA declares, “to recognize, preserve, and protect the *primary responsibilities and rights of States* to prevent, reduce, and eliminate pollution, [and] to plan the development and use (including restoration, preservation, and enhancement) of land and water resources” 33 U.S.C. § 1251(b) (emphasis added). Congress then goes on to order that “[f]ederal agencies *shall co-operate with* State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution” 33 U.S.C. § 1251(g) (emphasis added). Yet despite these explicit articulations of congressional purpose, the Agencies have chosen to adopt an approach that is decidedly un-cooperative.

Rather than impose top-down regulation, the Agencies should respect the water-management policies adopted by those who have the “primary responsibilities and rights” to make such determinations.

VI. The Proposed Rule Undermines Rights to Property and Potentially Exposes Individuals to Severe and Costly Civil and Criminal Penalties on Account of the Arbitrary Decisions of Bureaucrats

Expanding the Agencies’ jurisdiction over our country’s waters has grave consequences for individuals’ liberty and right to property. As the Supreme Court has observed, the Agencies exercise their authority to grant permits under the CWA with “the discretion of an enlightened despot, relying on such factors as ‘economics,’ ‘aesthetics,’ ‘recreation,’ and ‘in general, the needs and welfare of the people.’” *Rapanos*, 547 U.S. at 721 (plurality opinion) (quoting 33 C.F.R. § 320.4(a)). Successfully navigating the bureaucratic process to

receive such a permit can be expensive and time consuming—“[t]he average applicant for an individual permit spends 788 days and \$271,596 in completing the process.” *Id.* All the while, one risks coming out empty handed, unable to satisfy the economic judgments or aesthetic tastes of the Agencies’ officials. Even a brief survey of recent CWA cases demonstrates that widening the scope of the Agencies’ jurisdiction imperils individual liberty and rights to property.

A. The Proposed Rule Is an Assault on Rights to Property

The Agencies are quite clear that they consider rights to property an obstacle to their regulatory pretensions. The *State Constraints* report commissioned by the Agencies and cited to justify the proposed rule describes rights to property as “set[ting] up a series of hurdles” to regulation. *State Constraints*, at 30. More troubling still, the report warns that property-based limitations can create “additional political scrutiny [of agency discretion] that could call into dispute the agency’s scientific judgments.” *Id.* Such obstacles and public oversight, the report concludes, create a “gap” that the federal government needs to fill. *Id.* at 5.

So what problems, exactly, do the Agencies have with rights to property? For one, laws that prevent individuals *qua* individuals from bearing rightfully public burdens “limit some forms of new environmental regulation, as state agencies cannot afford to pay owners as a condition of having their regulations enforced.” *State Constraints*, at 20–21. Other laws protecting rights to property, such as assessment requirements, “create *additional processes* for an agency to follow when a proposed regulation is likely to affect private property rights.” *Id.* at 21 (emphasis added). Still others “enhance property owners’ ability to contest state regulation affecting their property.” *Id.* In short, it would seem that the Agencies’ grievances with rights to property boil down to the fact that those rights are a check on the Agencies’ unfettered authority.

But rights to property are essential to—indeed, coextensive with—liberty and freedom precisely because they provide the check on governments that the Agencies so lament. It was in recognition of the important role property has in preserving our freedoms that the

Founders to see fit to ratify the Fifth Amendment, providing that “nor shall private property be taken for public use, without just compensation.” U.S. Const. amend. V. The Agencies’ proposed rule is antithetical to this fundamental, natural right, and must accordingly be rejected.

B. Expanding the Agencies’ Jurisdiction Further Exposes Individuals to the Whims of Federal Bureaucrats

CWA compliance imposes a massive burden on property owners, and interacting with the Agencies in the exercise of their CWA can be a costly and dangerous undertaking. After all, they have as an enforcement mechanism the threat of “a fine of not less than \$5,000 nor more than \$50,000 *per day* of violation, or by imprisonment for not more than 3 years, or by both.” 33 U.S.C. § 1319(c)(2)(B) (emphasis added).

But just how burdensome the Agencies’ enforcement regime is does not come into focus until one considers concrete examples. Lois Alt, the owner of Eight Is Enough Farm in Old Fields, West Virginia, has been engaged in a lengthy legal battle with the EPA. Ms. Alt owns “eight poultry confinement houses equipped with ventilation fans, a litter storage shed, a compost shed and feed storage bins.” However, she violated the CWA when “[p]recipitation [fell] on Ms. Alt’s farmyard, where it contacted the particles, dust and feathers from the confinement houses, creating runoff that carried such particles, dust and feathers across a neighboring grassy pasture and into Mudlick Run, a water of the United States.” *Alt v. EPA*, 979 F. Supp. 2d 701, 704 (N.D. W. Va. 2013). Because Ms. Alt did not have a permit for such discharges, the “EPA said that it could bring a civil action against Ms. Alt for this violation, in which case Ms. Alt ‘will be subject to civil penalties of up to \$37,500 per day of violation’” and further that “a criminal action could be initiated.” *Id.* at 705.

Or one could discuss the case of David Hamilton in Worland, Wyoming, who wanted to grow crops on part of his property. To free up space, he diverted a “meandering” creek on his property into “a new, straightened channel,” also on his property, without an EPA

permit. *United States v. Hamilton*, 952 F. Supp. 2d 1271, 1272 (D. Wyo. 2013). Diverting the creek, it turned out, constituted discharging a pollutant from a point source under the CWA, so the EPA ordered Hamilton to “remove the fill material from Slick Creek and restore it to its previous condition” at his own expense. *Id.*

Application of CWA procedures recently prompted a unanimous rebuke from the Supreme Court in the *Sackett* case. For filling in part of their residential lot near a lake with rock and sand in preparation for building a home, the Sackett family found themselves in the undesirable position of facing potentially \$75,000-a-day in EPA fines for violating the CWA. *Sackett*, 132 S. Ct. at 1372. When the Sacketts asked for a hearing to challenge the EPA’s finding that their land is covered by the term “waters of the United States”—land, it should be noted, that was separated from the nearby lake by several other lots “containing permanent structures”—the EPA refused their request. *Id.* at 1370-71. It was only by taking their case to the Supreme Court that the Sacketts were ultimately able to vindicate their right simply to challenge the EPA determination in court.

Broad CWA jurisdiction can also pose a trap for the unwary. For example, James Wilson, a developer in Maryland, worked in partnership with the United States Department of Housing and Urban Development to build a development that included 10,000 housing units, parks, and schools. *United States v. Wilson*, 133 F.3d 251, 254 (4th Cir. 1997). On three of the parcels in the 4,000 acre development, Mr. Wilson had ditches dug so he could build on them. Even though Mr. Wilson worked with the federal government, and the Army Corps authored a memorandum stating that it is “not clear” the land was a “water of the United States,” he was eventually convicted on four felony counts for knowingly violating the CWA. *Id.* at 255. His conviction was overturned on appeal.

As these cases and countless others illustrate, the Agencies often exercise their regulatory muscles arbitrarily and to the detriment of individual liberty. Because the Agencies have such severe penalties at their disposal, and inadequate judicial checks on their discretion, the Agencies’ jurisdiction should be limited, not expanded. The Agencies’ proposal not

only moves policy in the wrong direction, it also fails to adequately consider the impact of expanded CWA jurisdiction on rights to property and fails to consider the burden that its approach would impose on property owners.

VII. Conclusion

If finalized, the Agencies' proposed redefinition of "waters of the United States," particularly the proposed definitions of "tributaries," "adjacent," and "other waters," will significantly expand their jurisdiction. Such an expansion would subvert the principles of federalism, rights to property, and individual liberty, in addition to violating the CWA itself. The proposed rule should be scrapped, and the Agencies should draft a new proposal that conforms to the limits of their authority as stated by the *Rapanos* plurality, that provides much-needed clarity to citizens and regulators, and that respects and strengthens rights to property.

Myron Ebell
Director, Center for Energy and
Environment
Competitive Enterprise Institute

David Ridenour
President
National Center for Public Policy
Research

Coley Jackson
President
Americans for Competitive Enterprise

Kenneth Haapala
Executive Vice President
Science and Environmental Policy Project

Chris Prandoni
Director of Energy and Environment
Policy
Americans for Tax Reform

Karen Kerrigan
President & CEO
Small Business & Entrepreneurship
Council

Craig Rucker
Executive Director
Committee For A Constructive
Tomorrow

Kathleen H. White
Distinguished Senior Fellow
Armstrong Center for Energy and the
Environment
Texas Public Policy Foundation

Daniel Simmons
Vice President for Policy
Institute for Energy Research

To: Rees, Sarah[rees.sarah@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Minoli, Kevin
Sent: Tue 2/28/2017 4:46:08 AM
Subject: Re: Draft FR Notice Re the Clean Water Rule

We've been talking with Craig Schmauder, Dep General Counsel for Installations in the Army GC's Office. Ryan took his information late tonight and was going to attempt to find an additional person to contact, but it has been hard when we haven't been able to engage Wetlands Div folks yet. They have the stronger connections with the Corps.

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Office Line: 202-564-8040

Direct Dial: 202-564-5551

From: Rees, Sarah
Sent: Monday, February 27, 2017 7:59 PM
To: Schnare, David
Cc: Minoli, Kevin
Subject: Re: Draft FR Notice Re the Clean Water Rule

OFA is in Archives. In my experience a call from the Administrator is unlikely to help re: the need for co signature.

On Feb 27, 2017, at 7:54 PM, Schnare, David <schnare.david@epa.gov> wrote:

Is OFA in Archives or in an executive branch agency? Could a call from the Administrator make a call to fix their problem? Have we found someone at the corps to talk to?

Sent from my iPhone

On Feb 27, 2017, at 6:32 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

Samantha, Shannon, and Sarah- Attached is the latest version of a draft FR notice the Administrator would like to sign very close in time to the President's signing of an Executive Order regarding the Clean Water Rule. Folks from OGC and OW have had conversations with Sarah throughout the second half of the day about this, and Sarah has flagged that the Office of the Federal Register is unlikely to publish the notice unless the Corps of Engineers is also a signatory. We are working with them to see if that is possible, but in the meantime wanted the OP folks to have the latest version and the 3rd floor folks to hear that there is a logistical challenge. The actual publication process is an OP lead, so having connected folks I will yield the floor to OP if you want to provide more info or suggest a path forward.

Thanks, Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

<CWR FR notice draft 2-27 5.45pm.docx>

To: Wendelowski, Karyn[wendelowski.karyn@epa.gov]
From: Minoli, Kevin
Sent: Tue 2/28/2017 1:25:00 AM
Subject: RE: Monday night version of the FR Notice

Any chance you've heard anything? Standing here with Ryan Jackson.

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

From: Wendelowski, Karyn
Sent: Monday, February 27, 2017 7:07 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Re: Monday night version of the FR Notice

I've forwarded to Craig and asked for a sense of where they are.

I have one suggested edit (and apologize, I should have caught earlier) in the second paragraph - suggestion in bracket and underline.

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5

Karyn

From: Minoli, Kevin
Sent: Monday, February 27, 2017 6:36 PM
To: Neugeboren, Steven
Cc: Siciliano, CarolAnn; Wehling, Carrie; Wendelowski, Karyn; Simons, Andrew; Prabhu, Aditi; Packard, Elise; Shapiro, Mike; Campbell, Ann
Subject: RE: Monday night version of the FR Notice

Got it. Thanks!

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

From: Neugeboren, Steven
Sent: Monday, February 27, 2017 6:35 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>

Cc: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>

Subject: Re: Monday night version of the FR Notice

There is a typo in the third paragraph "asking" should be "asked."

Sent from my iPhone

Steven Neugeboren

Associate General Counsel

United States Environmental Protection Agency

1200 Pennsylvania Ave. NW

Washington DC. 20460

202-564-5488

On Feb 27, 2017, at 6:21 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

All- Attached is a revised version of the notice that reflects policy input from the third floor. It is largely re-ordering some of the sentences, with a couple additional sentences added in. One of those sentences people will want to look at is the last sentence of the first paragraph. If there are necessary edits please send them back to me ASAP. You will notice that there are words in brackets in the text; those are meant to reflect places where the text will ultimately follow the language in an executive order.

Carol Ann- I will send this to OP next and include you.

Karyn- Please send to Craig S and share any read out you get as to where the Corps is on getting to yes.

Thanks again for all of the help. Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

<CWR FR notice draft 2-27 5.45pm.docx>

To: Schwab, Justin[schwab.justin@epa.gov]
From: Minoli, Kevin
Sent: Tue 2/28/2017 12:18:43 AM
Subject: Re: Monday night version of the FR Notice

I think that should work, especially seeing it is nearly impossible that we will get the Corps' signature by 11:00am to hit the publishing Friday deadline.

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Feb 27, 2017, at 7:15 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

We discussed over phone but to my knowledge did not circulate text. I don't think I have standing to unilaterally authorize doing so. Given the short length we can easily do so tomorrow, however? Let me know if you disagree.

Sent from my iPhone

On Feb 27, 2017, at 7:13 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

See below. Did y'all share with DOJ? Thoughts on whether we can?

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Begin forwarded message:

From: "Wendelowski, Karyn" <wendelowski.karyn@epa.gov>
Date: February 27, 2017 at 7:06:59 PM EST
To: "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
Cc: "Siciliano, CarolAnn" <Siciliano.CarolAnn@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Simons, Andrew" <Simons.Andrew@epa.gov>, "Prabhu, Aditi" <Prabhu.Aditi@epa.gov>, "Packard, Elise" <Packard.Elise@epa.gov>, "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>
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Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5 and Attorney Client

Deliberative Process / Ex. 5

Karyn

From: Minoli, Kevin

Sent: Monday, February 27, 2017 6:36 PM

To: Neugeboren, Steven

Cc: Siciliano, CarolAnn; Wehling, Carrie; Wendelowski, Karyn; Simons, Andrew; Prabhu, Aditi; Packard, Elise; Shapiro, Mike; Campbell, Ann

Subject: RE: Monday night version of the FR Notice

Got it. Thanks!

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

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Sent: Monday, February 27, 2017 6:35 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Cc: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
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United States Environmental Protection Agency

1200 Pennsylvania Ave. NW

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Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

<CWR FR notice draft 2-27 5.45pm.docx>

To: Schwab, Justin[schwab.justin@epa.gov]
From: Minoli, Kevin
Sent: Tue 2/28/2017 12:13:21 AM
Subject: Fwd: Monday night version of the FR Notice

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Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

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To: "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
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Deliberative Process / Ex. 5

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Karyn

From: Minoli, Kevin
Sent: Monday, February 27, 2017 6:36 PM
To: Neugeboren, Steven
Cc: Siciliano, CarolAnn; Wehling, Carrie; Wendelowski, Karyn; Simons, Andrew; Prabhu, Aditi; Packard, Elise; Shapiro, Mike; Campbell, Ann
Subject: RE: Monday night version of the FR Notice

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Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

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Steven Neugeboren
Associate General Counsel
United States Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington DC. 20460
202-564-5488

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Kevin S. Minoli
Acting General Counsel
Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

<CWR FR notice draft 2-27 5.45pm.docx>

To: Schnare, David[schnare.david@epa.gov]
From: Minoli, Kevin
Sent: Sat 2/25/2017 4:02:03 AM
Subject: Draft
CWR FR notice draft.KSM.docx

Hopefully getting this to you tonight helps you spend some quality time away from work tomorrow! If you prefer to talk through comments, you can call tonight until 1:00AM, tomorrow after 9:30AM or Personal Phone / Ex. 6 I have one suggestion for the document we are not writing that could make this process easier if they included it that it would be good to talk about. Thanks for the help, Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Office Line: 202-564-8040

Direct Dial: 202-564-5551

From: Adm14Pruitt, Scott
Location: Alm Conference Room
Importance: High
Subject: Canceled: Meeting Re: Clean Water Rule
Start Date/Time: Tue 3/14/2017 7:00:00 PM
End Date/Time: Tue 3/14/2017 7:45:00 PM
CWR Briefing Req 030617.docx

POC: Ann Campbell, 202-566-1370

EPA Staff (Required): Mike Flynn (OA); Michael Shapiro (OW), John Goodin (OW), Mindy Eisenberg (OW), Donna Downing (OW), Greg Peck (OW); Kevin Minoli (OGC), Steve Neugeboren (OGC), Carrie Wehling (OGC); Shannon Kenny (OP), William Nickerson (OP)

EPA Staff (Optional): Derek Threet (OA); Benita Best Wong (OW), Ann Campbell (OW)



Meeting Request Form for Administrator Scott Pruitt

Today's Date: 3/6/17

Requesting Office: Office of Water

Title of the Meeting: Clean Water Rule

Purpose: To brief the Administrator on a schedule for a revised Clean Water Rule and tee up key issues for his consideration, following on the recently released Executive Order and Federal Register Notice.

Role of the Administrator: To provide guidance on the schedule and key issues for a revised Clean Water Rule.

Background: On February 28, 2017, the President of the United States issued an Executive Order directing the EPA and the Army to review and rescind or revise the 2015 Clean Water Rule. On that same day, the EPA and the Army announced their intention to review that rule, and provided advanced notice of a forthcoming proposed rulemaking consistent with the Executive Order.

Last possible date for the meeting: 3/15

Is the meeting urgent and if so why?: Direction is needed to begin the rulemaking process.

Requested Time Length: 45 minutes

EPA Staff (Required): Mike Flynn (OA); Michael Shapiro (OW), John Goodin (OW), Mindy Eisenberg (OW), Donna Downing (OW), Greg Peck (OW); Kevin Minoli (OGC), Steve Neugeboren (OGC), Carrie Wehling (OGC); Shannon Kenny (OP), William Nickerson (OP)

EPA Staff (Optional): Derek Threet (OA); Benita Best Wong (OW), Ann Campbell (OW)

External Participants: None

Teleconference Required?: No

Video Conference Required?: No

Point of Contact for the Meeting: Ann Campbell, 202-566-1370

NOTE: Meeting request forms should be submitted to scheduling@epa.gov. The AO Special Assistant who covers your office must be copied on the request. All briefing material must be sent to your AO Special Assistant by 3:00 pm the day before your meeting, or to OCIR 48 hours in advance. If briefing materials are not submitted on time, we may need to reschedule your briefing.

NOTE: Meeting request forms should be submitted to scheduling@epa.gov. The AO Special Assistant who covers your office must be copied on the request. All briefing material must be sent to your AO Special Assistant by 3:00 pm the day before your meeting, or to OCIR 48 hours in advance. If briefing materials are not submitted on time, we may need to reschedule your briefing.

To: Carrie Wehling[Wehling.Carrie@epa.gov]; Simma Kupchan[Kupchan.Simma@epa.gov]; Karyn Wendelowski[wendelowski.karyn@epa.gov]; Goodin, John[Goodin.John@epa.gov]
From: Neugeboren, Steven
Sent: Mon 4/3/2017 9:09:14 PM
Subject: letter from NGO's on WOTUS rule
[17-000-6900.pdf](#)

Ogc has received an fyi on this controlled correspondence and sending to our team and John in case hasn't reached you guys yet.

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Veney, Carla
Sent: Monday, April 03, 2017 12:31 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: Emailing - 17-000-6900.pdf from OEX

Steve, this was sent to us as an FYI.



March 24, 2017

RECEIVED
2017 MAR 30 PM 2:19

OFFICE OF THE
EXECUTIVE SECRETARIAT

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Water Docket
U.S. Environmental Protection Agency
Mail Code 2822T
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Office of Water
U.S. Environmental Protection Agency
Michael Shapiro, Acting Asst. Administrator
Mail Code 4101M
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Office of Water
U.S. Environmental Protection Agency
Benita Best-Wong, Acting Principal Deputy
Asst. Administrator
Mail Code 4501T
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

**Re: Waters of the United States; Potential Revisions to Clean Water Rule--
Scientific and Technical Information to be Included in Administrative
Record**

Dear Mr. Pruitt, Mr. Shapiro and Ms. Best-Wong:

This letter is submitted on behalf of Earthjustice, Sierra Club, and Puget Soundkeeper Alliance (the "Conservation Organizations"). On February 28, 2017, President Trump signed an Executive Order directing review and potential revision of the Waters of the United States Rule, 80 Fed. Reg. 37,054 (June 29, 2015) (hereafter the "Clean Water Rule"), instructing that such review and any revision must be in keeping with Justice Scalia's opinion in *Rapanos v. United States*, 547 U.S. 715 (2006). In news stories that same day and shortly thereafter, Mr. Pruitt vowed to quickly withdraw the Clean Water Rule. Based upon the Executive Order and Mr. Pruitt's statements, the Conservation Organizations assume the directed review and likely withdrawal/revisions to the Clean Water Rule are occurring. This letter is to ensure that a number of scientific, technical, and legal matters are before, and considered by, the U.S. Environmental Protection Agency (the "Agency") and that they are included in the administrative record for the Agency's ultimate decision.

INTRODUCTION

The Federal Water Pollution Control Act (a/k/a the Clean Water Act) is one of our nation's most important and prescient environmental laws. Congress enacted the protections in the Federal Water Pollution Control Act at a time when news reports of horrific pollution incidents highlighted the fact that our waters were in trouble and we could not continue to allow their use as dumping grounds for pollutants without wreaking havoc on entire ecosystems and

NORTHWEST OFFICE 705 SECOND AVENUE, SUITE 203 SEATTLE, WA 98104

T: 206.343.7340 F: 206.343.1526 NWOFFICE@EARTHJUSTICE.ORG WWW.EARTHJUSTICE.ORG

jeopardizing our drinking water, food sources, commerce and recreation. To that end, Congress' stated purpose and intent was to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). Congress did not say that only those waters navigable in fact or with a significant nexus would receive those protections. Rather, it defined "navigable waters" generally as "waters of the U.S." 33 U.S.C. § 1362. The Legislative History of the 1972 Federal Water Pollution Control Act further demonstrates that Congress intended broad application of the law and its jurisdictional reach in order to foster the critical protective and remedial purposes of the law. Statements from both House Members and Senators in policy and conference committees made clear that the term "navigable" as used in the Act was not intended to constrain the reach and jurisdiction of the Act to protect against and clean up pollution in all our nation's waters. Members pointedly stated that they were concerned that inclusion of the word "navigable" *not* be read as limiting the Act's application in any way. Rather, their stated intent was for the Federal Water Pollution Control Act to have as broad an application as possible to protect all waters of the U.S. Members noted that the intent was to move away from the constrained notions of jurisdiction, and, in particular, notions regarding navigation, in order to ensure that waters are protected in a full and comprehensive way. *See A Legislative History of the Water Pollution Control Amendments of 1972* (Cong. Res. Serv.), at 178-79, 250-51, 327, 818, 1495.

Further, the Act is plainly a water pollution act, not a law about navigation (in any sense). The Army Corps of Engineers ("COE"), early in the life of the Federal Water Pollution Control Act, made an unsuccessful effort to impose strict navigation constraints on its obligations by construing its jurisdiction very narrowly under the new laws to match its jurisdiction under navigational laws such as the Rivers and Harbors Act of 1899. In *Natural Resources Def. Council v. Callaway*, 392 F. Supp. 685 (D.D.C. 1975), the court soundly rejected the COE's attempt finding that the Federal Water Pollution Control Act dictated a wider sweep in order to address pollutants to the nation's waters.

As EPA research and reporting repeatedly shows year after year, we still have a long way to go in applying the Clean Water Act and meeting its directives and, therefore, attempts to constrain application of the Clean Water Act will be extremely damaging to our nation's waters. Toxics are still discharged into our waters while agricultural discharges are almost wholly unregulated, account for almost half of the pollution entering waterways, and account for a very significant portion of the waters that are currently failing to meet basic standards of cleanliness (including the hypoxia problem in the Gulf and toxic algae blooms in lakes throughout the Midwest). *See, e.g., EPA, Nat'l Rivers and Streams Assessment* (Feb. 2013) where EPA reports that for its 2008-09 study well over 50% of the waters assessed exhibited *poor* conditions and only 20% were classified as "good." The results by region were even more disappointing with 62% of the waters in the east classified as poor and 58% in the plains states. (Copy enclosed.)

EPA's summary of states' reported water quality data paints a similarly dismal and apparently worsening picture. States' reported data on EPA's website at https://ofmpub.epa.gov/waters10/attains_index.control#total_assessed_waters, (last visited March 22, 2017) show that states have an extremely poor record of assessing the quality of their

waters with rarely more than one-half of waters assessed and often a small fraction, despite this being an obligation for the last forty years. And, of the waters that states have assessed, 55% of rivers and streams, 71.7% of lakes, and 50% of bays/estuaries are *failing* to meet one or more water quality standards. (These numbers have worsened over the last several years—in 2014 states' reported data had 53% of rivers and streams and 68% of lakes failing to meet standards.) Some regions' numbers are even worse. For example, the Region 6 states (which include Texas and Oklahoma) have assessed only slightly more than 11% of their rivers and streams and of those they report that 60% of them fail to meet basic water quality standards. For lakes in Region 6, 51% have been assessed and over 65% of them are too dirty to meet standards. Data in Region 3 (which includes states such as West Virginia and Pennsylvania) show 37% of lakes have been assessed and 83% of them fail to meet standards. Region 9 (which includes California and Arizona) report that only 24% of rivers and streams have been assessed with 87% of them failing to meet standards, 39% of lakes have been assessed with 87% failing, and 5% of estuaries and bays have been assessed with 98% of those failing to meet basic standards of quality.

Discharges of pollutants into our nation's water have not been eliminated and in many respects are not even controlled. Lake Erie, once a ray of hope for positive change under the Act, has descended once again into a cesspool of algae blooms and dead fish due to unabated and increasing nutrient runoff from farms and development. *See* reporting regarding City of Toledo's closure of water supply due to toxic algal blooms and extent of toxic bloom for 2014, "Behind Toledo's Water Crisis, a Long-Troubled Lake Erie," NEW YORK TIMES, August 4, 2014; "Lake Erie's Algae Explosion Blamed on Farmers," CBC News, August 7, 2014. The City of Des Moines, Iowa has tried, unsuccessfully, to address the skyrocketing expense of removing nitrates from the city's drinking water that is coming from upstream pollution sources. <http://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2017/03/22/lawsuits-real-losers-iowans-suffering-dirty-water/99501730/> (DES MOINES REGISTER, March 22, 2017).

The news is not better for wetlands, which are critical to groundwater recharge, controlling flooding, cleansing waters, and providing important habitat. Development and agriculture continue to decimate wetlands. In the latest comprehensive reports, agencies reported that we had lost over 50% of our wetlands nationwide; but in parts of the Midwest and coastal areas the figure is as high as 90% or more with attendant disastrous results for clean water. *See*, e.g., EPA Wetland Status & Trends, water.epa.gov/type/wetlands/vital_status.cfm and (copy enclosed); Dahl, T.E., *Status & Trends of Wetlands in the Conterminous United States, 2004-2009, Report to Congress*, U.S. Dep't of Interior, at 16 and 89-90 (2011) (copy enclosed). While the USFWS reports the *rate* of wetland loss has slowed, losses still outdistance gains as recently as 2009, the last year USFWS reported. *Id.* This holds true in USFWS' status and trends report for coastal wetland as well, where it is reported that the nation continues to suffer a net loss of coastal wetlands (copy enclosed). And even when wetland acres are not lost, they are often degraded, losing functions and values as wildlife habitat, natural flood control and natural water quality control. Development also continues to contribute to stormwater runoff and hugely-altered hydrographs and erosion by eliminating wetlands and natural riparian areas and covering the landscape with impervious surfaces, pouring toxic chemicals and fertilizer into natural

streams and triggering extreme erosion.¹ Plainly, the protections of the Federal Water Pollution Control Act are still needed on a broad scale as we are very far from reaching its goals and directives. The greatest and most sustainable Clean Water Act success stories are directly attributable to strict application of the Act's controls.

DOCUMENTS TO BE PLACED IN THE RECORD UNDERLYING THE AGENCY'S
REVIEW AND ANY REVISION OR WITHDRAWAL OF THE CLEAN WATER RULE

As the Agency proceeds with its work under the direction of the Executive Order, it is critical that the Agency consider the wealth of information outlined above and already developed by the Agency and the COE in the years of study and in the development of the Clean Water Rule. In the work to develop the Clean Water Rule, the Agency and COE consulted with the nation's top scientists on topics such as hydrology, geology, stream morphology, wetlands, and aquatic biology. The Agency's and CEO's consultation with the scientists helped to ensure the broadest and best protections for waters of the U.S. in keeping with the Supreme Court's and many Circuit Court's direction to include waters in "significant nexus" with larger downstream rivers. This makes both scientific and legal sense in that waters are not static on the landscape, and to protect the waters of the U.S. requires an understanding and protection of all waters in connection with larger waters—chemically, physically, and biologically – as directed by Congress in the Act itself. The Conservation Organizations therefore refer you to, at a minimum, the documents referenced herein and below, and call upon you to ensure that they are part of the record of your actions under the Executive Order and any action taken to review, reconsider, withdraw, affirm, amend, or replace the Clean Water Rule. We enclose a copy of each of these documents with this letter for inclusion in the administrative record:²

- A. EPA, *Nat'l Rivers and Streams Assessment* (Feb. 2013);
- B. EPA, *Nat'l Rivers and Streams Assessment Technical Report* (Mar. 2016);
- C. EPA, *Nat'l Rivers and Streams Assessment Fact Sheet*;
- D. EPA, *National Wetland Condition Assessment* (2011);
- E. Dahl T.E., *Status & Trends of Wetlands in the Conterminous United States, 2004-2009, Report to Congress*, U.S. Dep't of Interior (2011);

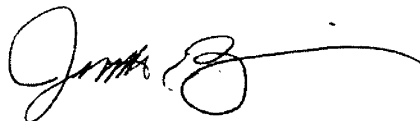
¹ It must also be noted that the proposed budget blueprint attacks funding for voluntary cleanup measures across the country, meaning that only through Clean Water Act regulation will improvements be made.

² The Conservation Organizations also assume that citations to the Agency's own databases and information reported by the states regarding status of waters, cited above, is part of the record for the actions described related to the Clean Water Rule.

- F. Dahl T.E., *Status & Trends of Wetlands in the Coastal Watersheds of the Coterminus United States, 2004-2009, Report to Congress*, U.S. Dep't of Interior (2013);
- G. EPA and COE, *Connectivity Report, preliminary for external review*, (2014);
- H. EPA and COE, *Connectivity Report* (final) (Jan. 2015);
- I. *Preliminary comments from individual members of the SAB Panel on Connectivity Report* (Aug. 2014);
- J. *Letter from SAB to EPA on Connectivity Panel Activity and Report* (Sept. 2014);
and
- K. EPA, *Technical Support Document in Support of Clean Water Rule* (May 2015).

Please do not hesitate to contact the undersigned should you have any questions.

Sincerely,



Janette K. Brimmer

Jennifer Chavez

Earthjustice

And on behalf of Sierra Club and Puget Soundkeeper Alliance

Enclosures

cc: Aaron Isherwood, Sierra Club (w/o encls.)
Chris Wilke, Puget Soundkeeper Alliance (w/o encls.)



EARTHJUSTICE

203 Hoge Building, 705 Second Avenue, Seattle, WA 98104-1711

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue NW
Washington, D.C. 20460



MAR 30 2017

To: Stewart, JamesL[Stewart.JamesL@epa.gov]; Penman, Crystal[Penman.Crystal@epa.gov]; OARM-OA-SMD-OB[OARM-OA-SMD-OB@epa.gov]; Perry, Regina[perry.regina@epa.gov]; SecurityOfficers[SecurityOfficers@epa.gov]
Cc: Wilson, Elaine[Wilson.Elaine@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]
From: Manley, Albert
Sent: Fri 4/14/2017 2:37:14 PM
Subject: RE: Attendees - Discussion of Economic Analysis Approach and OMB Engagement on WOTUS 4/18/2017 @ 9a - Mike Shapiro WJCE 3233

Message received and forwarded

From: Stewart, JamesL
Sent: Friday, April 14, 2017 10:29 AM
To: Penman, Crystal <Penman.Crystal@epa.gov>; OARM-OA-SMD-OB <OARM-OA-SMD-OB@epa.gov>; Perry, Regina <perry.regina@epa.gov>; SecurityOfficers <SecurityOfficers@epa.gov>
Cc: Wilson, Elaine <Wilson.Elaine@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: RE: Attendees - Discussion of Economic Analysis Approach and OMB Engagement on WOTUS 4/18/2017 @ 9a - Mike Shapiro WJCE 3233

Maj. Perry,

Please notify the PSO's in the east lobby of the below meeting on 4/18/17. All guests must present their federal ID's and sign in without going thru security screening. Crystal Penman will be the POC. Thanks

V/R

James L. Stewart
Security Specialist
HQ Guard Force Manager
Environmental Protection Agency
OARM/Facilities Management and Services Division
Headquarters Operations Branch
Office: 202-564-7841
Cell: 202-450-0284

Mailing Address:
William Jefferson Clinton Federal Building
1200 Pennsylvania Avenue NW MC 3204R
Washington, DC 20460

From: Penman, Crystal

Sent: Friday, April 14, 2017 10:25 AM

To: OARM-OA-SMD-OB <OARM-OA-SMD-OB@epa.gov>

Cc: Wilson, Elaine <Wilson.Elaine@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>

Subject: Attendees - Discussion of Economic Analysis Approach and OMB Engagement on WOTUS 4/18/2017 @ 9a - Mike Shapiro WJCE 3233

Attendees:

Jennifer Moyer jennifer.a.moyer@usace.army.mil

Stacey Jensen stacey.m.jensen@usace.army.mil

David F. Dale David.F.Dale@usace.army.mil

Cindy Barger cindy.s.barger.civ@mail.mil

Douglas W. Lamont douglas.w.lamont2.civ@mail.mil

Craig R Schmauder craig.r.schmauder.civ@mail.mil

Subject: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS

Nonresponsive Conference Code/ Ex. 6

Location: EPA 1201 Constitution Ave NW, Washington DC 20004 WJCE 3233 Please call 2025645700 for escort

Start: Tue 4/18/2017 9:00 AM
End: Tue 4/18/2017 9:45 AM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Shapiro, Mike

Required Attendees: Greenwalt, Sarah; Dravis, Samantha; Nickerson, William; McGartland, Al; Fotouhi, David; Neugeboren, Steven; Kupchan, Simma; Wehling, Carrie; jennifer.a.moyer@usace.army.mil; stacey.m.jensen@usace.army.mil; David.F.Dale@usace.army.mil; cindy.s.barger.civ@mail.mil; douglas.w.lamont2.civ@mail.mil; craig.r.schmauder.civ@mail.mil; Eisenberg, Mindy

Optional Attendees: Peck, Gregory; Campbell, Ann; Minoli, Kevin; Nandi, Romell; Washington, Valerie; Hewitt, Julie; Goodin, John; Best-Wong, Benita

Categories: Blue Category

To: Penman, Crystal[Penman.Crystal@epa.gov]; OARM-OA-SMD-OB[OARM-OA-SMD-OB@epa.gov]; Perry, Regina[perry.regina@epa.gov]; SecurityOfficers[SecurityOfficers@epa.gov]
Cc: Wilson, Elaine[Wilson.Elaine@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]
From: Stewart, JamesL
Sent: Fri 4/14/2017 2:29:23 PM
Subject: RE: Attendees - Discussion of Economic Analysis Approach and OMB Engagement on WOTUS 4/18/2017 @ 9a - Mike Shapiro WJCE 3233

Maj. Perry,

Please notify the PSO's in the east lobby of the below meeting on 4/18/17. All guests must present their federal ID's and sign in without going thru security screening. Crystal Penman will be the POC. Thanks

V/R

James L. Stewart
Security Specialist
HQ Guard Force Manager
Environmental Protection Agency
OARM/Facilities Management and Services Division
Headquarters Operations Branch
Office: 202-564-7841
Cell: 202-450-0284

Mailing Address:
William Jefferson Clinton Federal Building
1200 Pennsylvania Avenue NW MC 3204R
Washington, DC 20460

From: Penman, Crystal
Sent: Friday, April 14, 2017 10:25 AM
To: OARM-OA-SMD-OB <OARM-OA-SMD-OB@epa.gov>
Cc: Wilson, Elaine <Wilson.Elaine@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Attendees - Discussion of Economic Analysis Approach and OMB Engagement on WOTUS 4/18/2017 @ 9a - Mike Shapiro WJCE 3233

Attendees:

Jennifer Moyer jennifer.a.moyer@usace.army.mil
Stacey Jensen stacey.m.jensen@usace.army.mil
David F. Dale David.F.Dale@usace.army.mil
Cindy Barger cindy.s.barger.civ@mail.mil
Douglas W. Lamont douglas.w.lamont2.civ@mail.mil

Craig R Schmauder craig.r.schmauder.civ@mail.mil

Subject: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS
Nonresponsive Conference Code/ Ex. 6
Location: EPA 1201 Constitution Ave NW, Washington DC 20004 WJCE 3233 Please call 2025645700 for escort
Start: Tue 4/18/2017 9:00 AM
End: Tue 4/18/2017 9:45 AM
Recurrence: (none)
Meeting Status: Meeting organizer
Organizer: Shapiro, Mike
Required Attendees: Greenwalt, Sarah; Dravis, Samantha; Nickerson, William; McGartland, Al; Fotouhi, David; Neugeboren, Steven; Kupchan, Simma; Wehling, Carrie; jennifer.a.moyer@usace.army.mil; stacey.m.jensen@usace.army.mil; David.F.Dale@usace.army.mil; cindy.s.barger.civ@mail.mil; douglas.w.lamont2.civ@mail.mil; craig.r.schmauder.civ@mail.mil; Eisenberg, Mindy
Optional Attendees: Peck, Gregory; Campbell, Ann; Minoli, Kevin; Nandi, Romell; Washington, Valerie; Hewitt, Julie; Goodin, John; Best-Wong, Benita
Categories: Blue Category

To: OARM-OA-SMD-OB[OARM-OA-SMD-OB@epa.gov]
Cc: Wilson, Elaine[Wilson.Elaine@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov];
Campbell, Ann[Campbell.Ann@epa.gov]
From: Penman, Crystal
Sent: Fri 4/14/2017 2:24:34 PM
Subject: Attendees - Discussion of Economic Analysis Approach and OMB Engagement on
WOTUS 4/18/2017 @ 9a - Mike Shapiro WJCE 3233

Attendees:

Jennifer Moyer jennifer.a.moyer@usace.army.mil
Stacey Jensen stacey.m.jensen@usace.army.mil
David F. Dale David.F.Dale@usace.army.mil
Cindy Barger cindy.s.barger.civ@mail.mil
Douglas W. Lamont douglas.w.lamont2.civ@mail.mil
Craig R Schmauder craig.r.schmauder.civ@mail.mil

Subject: Discussion of Economic Analysis Approach and OMB Engagement on
WOTUS Nonresponsive Conference Code/ Ex. 6
Location: EPA 1201 Constiution Ave NW, Washington DC 20004 WJCE 3233
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Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Shapiro, Mike
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Al; Fotouhi, David; Neugeboren, Steven; Kupchan, Simma; Wehling,
Carrie; jennifer.a.moyer@usace.army.mil;
stacey.m.jensen@usace.army.mil; David.F.Dale@usace.army.mil;
cindy.s.barger.civ@mail.mil; douglas.w.lamont2.civ@mail.mil;
craig.r.schmauder.civ@mail.mil; Eisenberg, Mindy
Optional Attendees: Peck, Gregory; Campbell, Ann; Minoli, Kevin; Nandi, Romell;
Washington, Valerie; Hewitt, Julie; Goodin, John; Best-Wong, Benita

Categories: Blue Category

To: Peck, Gregory[Peck.Gregory@epa.gov]
From: Schmauder, Craig R SES (US)
Sent: Tue 4/11/2017 7:27:39 PM
Subject: Update for tomorrow and RAHs
[WOTUS2 Comms One-Pager 4-11-17.docx](#)
[Agenda -- WOTUS 12 April 2017 v2.docx](#)
[WOTUS2 tribal consultation letter 4-10-17.docx](#)
[Step 1 Rule Draft - 4-6-2017.docx](#)
[WOTUS-2 Step 1 drafty outline preamble v1_mge rmk.docx](#)

Greg,

FYI, as discussed.

VR, Craig

**AGENDA
WOTUS MEETING**

Wednesday, April 12, 2017

10:00-10:45am

WJC EAST 3233

Nonresponsive Conference Code/ Ex. 6

1. Introductions (3 minutes)
2. Rulemaking Updates (30 minutes)
 - a. Federalism and Tribal consultation
 - b. Step 1 draft rule text and preamble outline
 - c. Schedule
 - d. Senior leadership check-ins
3. Communications Planning (10 minutes)
4. Next Steps (2 minutes)

To: Peck, Gregory[Peck.Gregory@epa.gov]; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US)[John.M.Wilson@usace.army.mil]
Cc: Schmauder, Craig R SES (US)[craig.r.schmauder.civ@mail.mil]
From: Cooper, David R SES USARMY CEHQ (US)
Sent: Thur 3/30/2017 7:06:08 PM
Subject: RE: WOUS (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

Deliberative Process / Ex. 5

David Cooper
Chief Counsel
U.S. Army Corps of Engineers
441 G Street, NW
Washington, DC 20314
Office Tel.: 202-761-0018
Mobile Tel.: 202-494-2987

-----Original Message-----

From: Peck, Gregory [mailto:Peck.Gregory@epa.gov]
Sent: Thursday, March 30, 2017 2:46 PM
To: Cooper, David R SES USARMY CEHQ (US) <David.R.Cooper@usace.army.mil>
Cc: Schmauder, Craig R SES (US) <craig.r.schmauder.civ@mail.mil>
Subject: [Non-DoD Source] RE: WOUS (UNCLASSIFIED)

Hey David:

Deliberative Process / Ex. 5

Gregory E. Peck
Chief of Staff
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C. 20460

202-564-5700

-----Original Message-----

From: Cooper, David R SES USARMY CEHQ (US) [mailto:David.R.Cooper@usace.army.mil]
Sent: Thursday, March 30, 2017 2:25 PM
To: Moyer, Jennifer A CIV USARMY CEHQ (US) <Jennifer.A.Moyer@usace.army.mil>; Jensen, Stacey

M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Schmauder, Craig R SES (US) <craig.r.schmauder.civ@mail.mil>; Peck, Gregory <Peck.Gregory@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: WOUS (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

Deliberative Process / Ex. 5

Chief Counsel
U.S. Army Corps of Engineers
441 G Street, NW
Washington, DC 20314
Office Tel.: 202-761-0018
Mobile Tel.: 202-494-2987

-----Original Message-----

From: Moyer, Jennifer A CIV USARMY CEHQ (US)
Sent: Thursday, March 30, 2017 1:54 PM
To: Cooper, David R SES USARMY CEHQ (US) <David.R.Cooper@usace.army.mil>
Subject: FW: WOUS (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

See the message, below, from Greg Peck. It is what I wanted to talk to you about.

I'm on my BlackBerry.

Jennifer Moyer
Chief, Regulatory Program
Headquarters, U.S. Army Corps of Engineers
441 G Street, NW
Washington, DC 20314
202-761-4598 (office)
703-589-5746 (mobile)

From: Peck, Gregory
Sent: Thursday, March 30, 2017 12:36 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Goodin, John <Goodin.John@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>
Subject: WOUS

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Glad to discuss.

Greg

Gregory E. Peck

Chief of Staff

Office of Water

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue

Washington, D.C. 20460

202-564-5700

CLASSIFICATION: UNCLASSIFIED
CLASSIFICATION: UNCLASSIFIED

CLASSIFICATION: UNCLASSIFIED

To: Peck, Gregory[Peck.Gregory@epa.gov]
From: Thomas, Latosha
Sent: Tue 3/28/2017 3:54:17 PM
Subject: RE: TALKING POINTS: Industry Stakeholder Meeting (Due Tuesday by 2PM)

Hi Greg,

Yes, that's on the agenda. I will send around this afternoon!

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Peck, Gregory

Sent: Tuesday, March 28, 2017 11:53 AM
To: Thomas, Latosha <Thomas.Latosha@epa.gov>
Subject: Re: TALKING POINTS: Industry Stakeholder Meeting (Due Tuesday by 2PM)

Latosha

Did we not get questions on the status of the Clean Water Rule?

Thanks

From: Thomas, Latosha
Sent: Sunday, March 26, 2017 6:15:25 PM
To: Christensen, Christina; Farris, Erika D.; Nandi, Romell; Gonzalez, Yvonne V.; Spraul, Greg; Fontaine, Tim; Peck, Gregory
Subject: TALKING POINTS: Industry Stakeholder Meeting (Due Tuesday by 2PM)

Hi All,

The next industry stakeholder meeting is scheduled for **Wednesday from 9-10AM**. I've

Deliberative Process / Ex. 5

Latosha Thomas

U.S. Environmental Protection Agency

Office of Water (On Detail)

(202) 564-0211 (desk)

(202) 568-0851 (cell)

thomas.latosha@epa.gov

To: Peck, Gregory[Peck.Gregory@epa.gov]
From: Peterson, Jeff
Sent: Tue 3/28/2017 1:57:24 PM
Subject: FW: Connectivity: FW: Due 4/11: Advanced Notification Manuscript--#ORD020908 Leibowitz, Connectivity of streams and wetlands to downstream waters - comments requested by April 11
[Leibowitz-CONNAP17-Manuscript Final.docx](#)
[ATT00001.htm](#)
[Leibowitz-CONNAP17-High Profile Fact Sheet.docx](#)
[ATT00002.htm](#)

Hi Greg

Checking to see if you had seen this in another email string or elsewhere...note that the intro includes discussion of the rule.

Jeff Peterson
Senior Policy Advisor
Office of Water
US Environmental Protection Agency
Washington, D.C. 20460
202-564-3745
Cell: 202-805-0694

Internal, Deliberative, Not for Release

From: Metchis, Karen
Sent: Tuesday, March 28, 2017 9:07 AM
To: Peterson, Jeff <Peterson.Jeff@epa.gov>
Subject: Connectivity: FW: Due 4/11: Advanced Notification Manuscript--#ORD020908 Leibowitz, Connectivity of streams and wetlands to downstream waters - comments requested by April 11

Deliberative Process / Ex. 5

Jeff – since you had a former interest in this topic, would you be willing to comment on this?

Karen Metchis

EPA Office of Water

WJC East 3311T

202-564-0734

metchis.karen@epa.gov

<http://water.epa.gov/scitech/climatechange/>

From: Emerson, Vanessa

Sent: Tuesday, March 28, 2017 6:41 AM

To: Balasa, Kate <balasa.kate@epa.gov>; Corona, Joel <Corona.Joel@epa.gov>; Reiley, Mary <Reiley.Mary@epa.gov>; Metchis, Karen <Metchis.Karen@epa.gov>; Ohanian, Edward <Ohanian.Edward@epa.gov>; Zahreddine, Phil <Zahreddine.Phil@epa.gov>; Rogers, Emily <rogers.emily@epa.gov>; Smith, Bernicel <Smith.Bernicel@epa.gov>; Smith, Lameka <Smith.Lameka@epa.gov>; Soares, Barbara <soares.barbara@epa.gov>; Tucker, Nicole <Tucker.Nicole@epa.gov>

Cc: Snowden, Belinda <snowden.belinda@epa.gov>

Subject: Due 4/11: Advanced Notification Manuscript-#ORD020908 Leibowitz, Connectivity of streams and wetlands to downstream waters - comments requested by April 11

Good morning,

Please find attached another manuscript for review. Please send your comments or indicate that you have none by April 11th.

Thank you,

Vanessa

From: Reiley, Mary
Sent: Monday, March 27, 2017 9:26 PM
To: Emerson, Vanessa <emerson.vanessa@epa.gov>; Snowden, Belinda <snowden.belinda@epa.gov>
Subject: A new one! FW: Advanced Notification Manuscript--#ORD020908 Leibowitz, Connectivity of streams and wetlands to downstream waters - comments requested by April 11

From: vanDrunick, Suzanne
Sent: Monday, March 27, 2017 7:01 PM
To: Reiley, Mary <Reiley.Mary@epa.gov>; Ohanian, Edward <Ohanian.Edward@epa.gov>
Cc: Matney, Rachel <Matney.Rachel@epa.gov>; Williams, Joe <Williams.Joe@epa.gov>
Subject: Advanced Notification Manuscript--#ORD020908 Leibowitz, Connectivity of streams and wetlands to downstream waters - comments requested by April 11

Dear Mary and Ed

Deliberative Process / Ex. 5

Suzanne

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

To: Peck, Gregory[Peck.Gregory@epa.gov]
From: Schmauder, Craig R SES (US)
Sent: Mon 3/6/2017 8:17:34 PM
Subject: FW: letter to AG
CWR EO letter to AG draft (1).doc

Respectfully -- Craig
Craig R. Schmauder, SES
Deputy General Counsel
Installations, Environment & Civil Works
(703) 695-2253

NOTICE: This message may contain information protected by the attorney-client, attorney work-product, deliberative-process, or other privilege. Do not disseminate without the approval of the Office of the General Counsel, Department of the Army. If you have received this message in error, please notify the sender immediately by email or telephone and delete this message.

-----Original Message-----

From: Wendelowski, Karyn [mailto:wendelowski.karyn@epa.gov]
Sent: Monday, March 06, 2017 7:34 AM
To: Schmauder, Craig R SES (US) <craig.r.schmauder.civ@mail.mil>
Subject: [Non-DoD Source] letter to AG

Hi Craig - Just a heads up that in light of the EO, Kevin is planning to send a letter to the AG (draft attached).

Karyn

To: Peck, Gregory[Peck.Gregory@epa.gov]
From: Orvin, Chris
Sent: Mon 3/6/2017 4:57:41 PM
Subject: Draft TARGET response letter on CWR
[AX 17-000-4821 KILKENNEY.pdf](#)
[Kilkenny Draft Response - 03-06-17.docx](#)

Deliberative Process / Ex. 5

Thanks,

Chris Orvin
U.S Environmental Protection Agency

Special Assistant to the Chief of Staff
Office of Water

202-564-0430



January 30, 2017

The Honorable E. Scott Pruitt, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 1101A
Washington, DC 20460

RECEIVED
2017 FEB 23 PM 12:58
OFFICE OF THE
EXECUTIVE SECRETARIAT

Dear Administrator Pruitt:

The Texas Alliance for Responsible Growth, Environment and Transportation (TARGET) wish to congratulate you on your appointment as Administrator of the U.S. Environmental Protection Agency. We look forward to supporting your efforts to reform the EPA and its extreme policies that have grossly exceeded its statutory authority and threatened individual liberty.

TARGET is a broad coalition of industry groups, including homebuilders & developers, commercial developers, economic development organizations, and transportation advocates. We write to you today to voice our extreme concerns with the EPA's Waters of the U.S. rule (WOTUS). As you know, the WOTUS rule drastically expands the EPA's jurisdiction, making small waterways like wetlands and ponds subject to federal rules and permitting processes. We applaud your actions as the attorney general of Oklahoma to legally challenge the rule and block EPA's attempt to broaden its authority by redefining "Waters of the U.S." beyond the scope of what was originally intended by Congress.

The ramifications of the current rule are enormous for business - especially for the homebuilding, land development, construction, and transportation infrastructure sectors. The U.S. Chamber of Commerce concludes that under the new rule, "virtually any business that owns or operates a facility or has property would be adversely affected, particularly if it has ditches, retention ponds for storm water runoff, fire/dust suppression ponds, or other surface impoundments on site."

One particularly onerous part of the rule is the Texas Coastal Prairie Wetlands provision. Because of this portion of the rule regulators are now told they must consider each wetland on case-by-case basis as a part of a larger undefined system regardless of their distance from other regulated waters.

The Texas portion of the WOTUS rule is a broad, subjective, "catch-all" approach by regulators to establish jurisdiction over vast swaths of land. This will severely threaten individual property rights, deter business investment, impact home affordability, discourage relocation of new businesses, and would limit or even eliminate expansion of local business operations.

Last year TARGET joined other business organizations and filed a lawsuit to stop the rule. Thankfully, as you well know, a nationwide stay has been placed on the rule by the U.S. Court of Appeals for the Sixth Circuit, but it could be years until this litigation is settled.

January 30, 2017

Page 2


Meanwhile, impacted businesses across the country, and the Texas coastal area, are left with uncertainty and faced with the EPA's attempts to implement the rule through a piecemeal approach.

If the new rule is allowed to stand, land use options will be restricted, financing of projects will be jeopardized, permitting and compliance costs will significantly increase, regulatory uncertainty and construction delays will take place, and mitigation costs for developers will increase because the new rule will make it easier for the EPA to regulate more private property located along the Texas Gulf Coast.

We urge you to withdraw the implementation of the unlawful WOTUS rule and work with Congress, states, and impacted stakeholders to consider regulatory or legislative alternatives that will provide a sensible solution and clarify the scope of the Clean Water Act.

Thank you for your consideration of our comments and we greatly appreciate your commitment to protect property rights and preserve the economic vitality of our nation.

Sincerely,



Mark A. Kilkenny
Chairman, TARGET

Members:

Associated Builders and Contractors of Houston

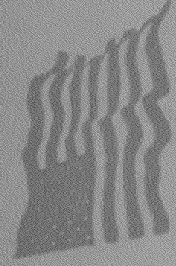
Associated General Contractors of Texas (Highway)

Greater Fort Bend Economic Development Council

Greater Houston Builders Association

Houston Council of Engineering Companies

The Houston Real Estate Council



Hasler

01/30/2017

US POSTAGE \$0.00



FEB 03 2017

MISCHER

Nine Greenway Plaza Suite 2900
Houston, Texas 77046
Tel 713.802.7900
Fax 713.864.0526

The Honorable E. Scott Pruitt, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 1101A
Washington, DC 20460



To: Peck, Gregory[Peck.Gregory@epa.gov]
Cc: Grantham, Nancy[Grantham.Nancy@epa.gov]; Dennis, Allison[Dennis.Allison@epa.gov]
From: Loop, Travis
Sent: Mon 3/6/2017 3:35:12 PM
Subject: RE: Clean Water Act

Deliberative Process / Ex. 5

Travis Loop

Director of Communications
Office of Water

U.S. Environmental Protection Agency

202-870-6922

loop.travis@epa.gov

From: Grantham, Nancy
Sent: Monday, March 06, 2017 6:49 AM
To: Loop, Travis <Loop.Travis@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>
Subject: FW: Clean Water Act

Does ow have the answer to question below? thanks ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Gray, David

Sent: Thursday, March 02, 2017 11:49 AM

To: Press <Press@epa.gov>

Cc: regionalpress <regionalpress@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>

Subject: FW: Clean Water Act

This one is for HQ.

From: Hardy, Steve [mailto:shardy@theadvocate.com]

Sent: Thursday, March 02, 2017 10:47 AM

To: Durant, Jennah <Durant.Jennah@epa.gov>

Subject: RE: Clean Water Act

Hey Jennah, I wanted to circle back and see if there's anyone at the EPA I could talk to about the WOTUS order. I can talk to them just on background if that makes thing easier for you.

From: Hardy, Steve

Sent: Tuesday, February 28, 2017 3:40 PM

To: 'Durant, Jennah'

Subject: Clean Water Act

Jennah, per our phone conversation, I'm trying to determine the potential local impact of the president's executive order this afternoon. Pres. Trump has ordered the EPA to review the 2015 Water of the United States rule. Is there a document somewhere that shows which bodies of water (especially in Louisiana) were firmly included in the Clean Water Act as a result of the 2015 rule? I'm trying to find out which bodies could change if the administration amends it. Not on a tight deadline but would appreciate a response as soon as its available. Thanks

Steve

THE **A**DVOCATE

Steve Hardy

Reporter

shardy@theadvocate.com

www.theadvocate.com

Tel: (225) 388-0099

Cell: (225) 329-4068

Fax: (225) 344-3624

Delivering throughout south Louisiana each day

News|Advertising|Print & Online

To: Peck, Gregory[Peck.Gregory@epa.gov]
Cc: Owen, Gib A CIV USARMY HQDA ASA CW[gib.a.owen.civ@mail.mil]
From: Orvin, Chris
Sent: Wed 3/1/2017 2:39:09 PM
Subject: RE: CWR POC (UNCLASSIFIED//FOUO)

Greg, Gib:

Here is the link to the page with the notice of intention:

<https://www.epa.gov/cleanwaterrule/notice-intention-review-and-rescind-or-revise-clean-water-rule>

The actual PDF is on that page, but here is the direct link:

https://www.epa.gov/sites/production/files/2017-02/documents/cwr_fr_notice_prepublication_version.pdf

And the lead graphic on the CWR page also has some plain language about the EO, in case that's helpful too: <https://www.epa.gov/cleanwaterrule>

Thanks,

Chris Orvin
U.S Environmental Protection Agency

Special Assistant to the Chief of Staff
Office of Water

202-564-0430

From: Peck, Gregory
Sent: Wednesday, March 01, 2017 9:30 AM
To: Orvin, Chris <Orvin.Chris@epa.gov>
Cc: Owen, Gib A CIV USARMY HQDA ASA CW <gib.a.owen.civ@mail.mil>
Subject: Fwd: CWR POC (UNCLASSIFIED//FOUO)

Chris. Can you send Gib the link to EPAs website notice of intent to rewrite the clean water rule. It was posted yesterday.

Thanks

Gregory E. Peck

Chief of Staff

Office of Water

U.S.Environmental Protection Agency

Washington, DC 20460

(202)564-5700

Begin forwarded message:

From: "Owen, Gib A CIV USARMY HQDA ASA CW (US)" <gib.a.owen.civ@mail.mil>
Date: March 1, 2017 at 9:26:50 AM EST
To: "Peck, Gregory" <Peck.Gregory@epa.gov>
Cc: "Schmauder, Craig R SES (US)" <craig.r.schmauder.civ@mail.mil>
Subject: RE: CWR POC (UNCLASSIFIED//FOUO)

CLASSIFICATION: UNCLASSIFIED//FOR OFFICIAL USE ONLY

Greg

Can you have someone send me the link to the information on your site

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Gib

Gib Owen
Water Resources Policy & Legislation
Office of the Assistant Secretary of the Army for Civil Works
Washington DC
gib.a.owen.civ@mail.mil
703 695 4641 - Office
571 274 1929 - Cell

To: Barger, Cindy S CIV USARMY HQDA ASA CW (US)[cindy.s.barger.civ@mail.mil]
From: Peck, Gregory
Sent: Tue 4/18/2017 12:34:38 PM
Subject: RE: [Non-DoD Source] FW: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call in **Nonresponsive Conference Code/ Ex. 6** Tuesday, April 18, 2018 @ 9am 3233 Mike Shapiro

I'll let you know if they send us something new for tomorrow.

Gregory E. Peck
Chief of Staff
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C. 20460

202-564-5700

-----Original Message-----

From: Barger, Cindy S CIV USARMY HQDA ASA CW (US) [mailto:cindy.s.barger.civ@mail.mil]
Sent: Tuesday, April 18, 2017 8:33 AM
To: Peck, Gregory <Peck.Gregory@epa.gov>; Schmauder, Craig R SES (US) <craig.r.schmauder.civ@mail.mil>
Subject: RE: [Non-DoD Source] FW: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call in **Nonresponsive Conference Code/ Ex. 6** Tuesday, April 18, 2018 @ 9am 3233 Mike Shapiro

Thanks Greg. We are going to be calling in today due to some tight schedules. Chat with you soon and see you tomorrow. Will this one work for tomorrow's meetings as well?

Thanks!
Cindy

-----Original Message-----

From: Peck, Gregory [mailto:Peck.Gregory@epa.gov]
Sent: Tuesday, April 18, 2017 8:31 AM
To: Schmauder, Craig R SES (US) <craig.r.schmauder.civ@mail.mil>; Barger, Cindy S CIV USARMY HQDA ASA CW (US) <cindy.s.barger.civ@mail.mil>
Subject: [Non-DoD Source] FW: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call in **Nonresponsive Conference Code/ Ex. 6** Tuesday, April 18, 2018 @ 9am 3233 Mike Shapiro

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

FYI

Gregory E. Peck
Chief of Staff
Office of Water

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C. 20460

202-564-5700

From: Penman, Crystal
Sent: Tuesday, April 18, 2017 8:03 AM
To: Wilson, Elaine <Wilson.Elaine@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: FW: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call in 1-
Nonresponsive Conference Code/ Ex. 6 Tuesday, April 18, 2018 @ 9am 3233 Mike Shapiro

From: Stewart, JamesL
Sent: Tuesday, April 18, 2017 7:53 AM
To: Penman, Crystal <Penman.Crystal@epa.gov < Caution-mailto:Penman.Crystal@epa.gov > >; OARM-OA-SMD-OB <OARM-OA-SMD-OB@epa.gov < Caution-mailto:OARM-OA-SMD-OB@epa.gov > >; Perry, Regina <perry.regina@epa.gov < Caution-mailto:perry.regina@epa.gov > >; SecurityOfficers <SecurityOfficers@epa.gov < Caution-mailto:SecurityOfficers@epa.gov > >
Subject: RE: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call in 1-866-29
Nonresponsive Conference Code/ Ex. 6

Maj. Perry,

Please notify the PSO's in the east lobby that the below federal employees will be arriving for a 9 am meeting today. They must present their federal ID's and sign in without going thru security screening. Crystal Penman will be the POC. Thanks

V/R

James L. Stewart
Security Specialist
HQ Guard Force Manager
Environmental Protection Agency
OARM/Facilities Management and Services Division Headquarters Operations Branch
Office: 202-564-7841
Cell: 202-450-0284

Mailing Address:
William Jefferson Clinton Federal Building
1200 Pennsylvania Avenue NW MC 3204R
Washington, DC 20460

From: Penman, Crystal
Sent: Tuesday, April 18, 2017 7:48 AM
To: OARM-OA-SMD-OB <OARM-OA-SMD-OB@epa.gov < Caution-mailto:OARM-OA-SMD-OB@epa.gov > >

Subject: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call in

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6 Tuesday, April 18, 2018 @ 9am 3233 Mike Shapiro

Attendees:

Jennifer Moyer
Craig Schmauder
Stacey Jensen
David Dale
Cindy Barger
Douglas Lamont

To: Schmauder, Craig R SES (US)[craig.r.schmauder.civ@mail.mil]
From: Peck, Gregory
Sent: Fri 4/14/2017 2:30:05 PM
Subject: FW: Attendees - Discussion of Economic Analysis Approach and OMB Engagement on WOTUS 4/18/2017 @ 9a - Mike Shapiro WJCE 3233

Gregory E. Peck
Chief of Staff
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C. 20460

202-564-5700

From: Stewart, JamesL
Sent: Friday, April 14, 2017 10:29 AM
To: Penman, Crystal <Penman.Crystal@epa.gov>; OARM-OA-SMD-OB <OARM-OA-SMD-OB@epa.gov>; Perry, Regina <perry.regina@epa.gov>; SecurityOfficers <SecurityOfficers@epa.gov>
Cc: Wilson, Elaine <Wilson.Elaine@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: RE: Attendees - Discussion of Economic Analysis Approach and OMB Engagement on WOTUS 4/18/2017 @ 9a - Mike Shapiro WJCE 3233

Maj. Perry,

Please notify the PSO's in the east lobby of the below meeting on 4/18/17. All guests must present their federal ID's and sign in without going thru security screening. Crystal Penman will be the POC. Thanks

V/R

James L. Stewart
Security Specialist
HQ Guard Force Manager
Environmental Protection Agency
OARM/Facilities Management and Services Division
Headquarters Operations Branch
Office: 202-564-7841
Cell: 202-450-0284

Mailing Address:
William Jefferson Clinton Federal Building

1200 Pennsylvania Avenue NW MC 3204R
Washington, DC 20460

From: Penman, Crystal
Sent: Friday, April 14, 2017 10:25 AM
To: OARM-OA-SMD-OB <OARM-OA-SMD-OB@epa.gov>
Cc: Wilson, Elaine <Wilson.Elaine@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Attendees - Discussion of Economic Analysis Approach and OMB Engagement on WOTUS 4/18/2017 @ 9a - Mike Shapiro WJCE 3233

Attendees:

Jennifer Moyer jennifer.a.moyer@usace.army.mil
Stacey Jensen stacey.m.jensen@usace.army.mil
David F. Dale David.F.Dale@usace.army.mil
Cindy Barger cindy.s.barger.civ@mail.mil
Douglas W. Lamont douglas.w.lamont2.civ@mail.mil
Craig R Schmauder craig.r.schmauder.civ@mail.mil

Subject: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS

Location: Nonresponsive Conference Code/ Ex. 6
EPA 1201 Constiution Ave NW, Washington DC 20004 WJCE 3233 Please call 2025645700 for escort

Start: Tue 4/18/2017 9:00 AM
End: Tue 4/18/2017 9:45 AM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Shapiro, Mike

Required Attendees: Greenwalt, Sarah; Dravis, Samantha; Nickerson, William; McGartland, Al; Fotouhi, David; Neugeboren, Steven; Kupchan, Simma; Wehling, Carrie; jennifer.a.moyer@usace.army.mil; stacey.m.jensen@usace.army.mil; David.F.Dale@usace.army.mil; cindy.s.barger.civ@mail.mil; douglas.w.lamont2.civ@mail.mil; craig.r.schmauder.civ@mail.mil; Eisenberg, Mindy

Optional Attendees: Peck, Gregory; Campbell, Ann; Minoli, Kevin; Nandi, Romell; Washington, Valerie; Hewitt, Julie; Goodin, John; Best-Wong, Benita

Categories: Blue Category

To: Penman, Crystal[Penman.Crystal@epa.gov]
From: Peck, Gregory
Sent: Fri 4/14/2017 2:29:36 PM
Subject: RE: Attendees - Discussion of Economic Analysis Approach and OMB Engagement on WOTUS 4/18/2017 @ 9a - Mike Shapiro WJCE 3233

Thanks Crystal

Gregory E. Peck
Chief of Staff
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C. 20460

202-564-5700

From: Penman, Crystal
Sent: Friday, April 14, 2017 10:25 AM
To: OARM-OA-SMD-OB <OARM-OA-SMD-OB@epa.gov>
Cc: Wilson, Elaine <Wilson.Elaine@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Attendees - Discussion of Economic Analysis Approach and OMB Engagement on WOTUS 4/18/2017 @ 9a - Mike Shapiro WJCE 3233

Attendees:

Jennifer Moyer jennifer.a.moyer@usace.army.mil
Stacey Jensen stacey.m.jensen@usace.army.mil
David F. Dale David.F.Dale@usace.army.mil
Cindy Barger cindy.s.barger.civ@mail.mil
Douglas W. Lamont douglas.w.lamont2.civ@mail.mil
Craig R Schmauder craig.r.schmauder.civ@mail.mil

Subject: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS (**Nonresponsive Conference Code/ Ex. 6**)
Location: EPA 1201 Constitution Ave NW, Washington DC 20004 WJCE 3233
Please call 2025645700 for escort
Start: Tue 4/18/2017 9:00 AM
End: Tue 4/18/2017 9:45 AM
Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Shapiro, Mike

Required Attendees: Greenwalt, Sarah; Dravis, Samantha; Nickerson, William; McGartland, Al; Fotouhi, David; Neugeboren, Steven; Kupchan, Simma; Wehling, Carrie; jennifer.a.moyer@usace.army.mil; stacey.m.jensen@usace.army.mil; David.F.Dale@usace.army.mil; cindy.s.barger.civ@mail.mil; douglas.w.lamont2.civ@mail.mil; craig.r.schmauder.civ@mail.mil; Eisenberg, Mindy

Optional Attendees: Peck, Gregory; Campbell, Ann; Minoli, Kevin; Nandi, Romell; Washington, Valerie; Hewitt, Julie; Goodin, John; Best-Wong, Benita

Categories: Blue Category

To: Schmauder, Craig R SES (US)[craig.r.schmauder.civ@mail.mil]; Barger, Cindy S CIV USARMY HQDA ASA CW (US)[cindy.s.barger.civ@mail.mil]
From: Peck, Gregory
Sent: Fri 4/14/2017 2:27:15 PM
Subject: FW: Attendees - Discussion of Economic Analysis Approach and OMB Engagement on WOTUS 4/18/2017 @ 9a - Mike Shapiro WJCE 3233

Gregory E. Peck
Chief of Staff
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C. 20460

202-564-5700

From: Penman, Crystal
Sent: Friday, April 14, 2017 10:25 AM
To: OARM-OA-SMD-OB <OARM-OA-SMD-OB@epa.gov>
Cc: Wilson, Elaine <Wilson.Elaine@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Attendees - Discussion of Economic Analysis Approach and OMB Engagement on WOTUS 4/18/2017 @ 9a - Mike Shapiro WJCE 3233

Attendees:

Jennifer Moyer jennifer.a.moyer@usace.army.mil
Stacey Jensen stacey.m.jensen@usace.army.mil
David F. Dale David.F.Dale@usace.army.mil
Cindy Barger cindy.s.barger.civ@mail.mil
Douglas W. Lamont douglas.w.lamont2.civ@mail.mil
Craig R Schmauder craig.r.schmauder.civ@mail.mil

Subject: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS **Nonresponsive Conference Code/ Ex. 6**
Location: EPA 1201 Constitution Ave NW, Washington DC 20004 WJCE 3233
Please call 2025645700 for escort
Start: Tue 4/18/2017 9:00 AM
End: Tue 4/18/2017 9:45 AM
Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Shapiro, Mike

Required Attendees: Greenwalt, Sarah; Dravis, Samantha; Nickerson, William; McGartland, Al; Fotouhi, David; Neugeboren, Steven; Kupchan, Simma; Wehling, Carrie; jennifer.a.moyer@usace.army.mil; stacey.m.jensen@usace.army.mil; David.F.Dale@usace.army.mil; cindy.s.barger.civ@mail.mil; douglas.w.lamont2.civ@mail.mil; craig.r.schmauder.civ@mail.mil; Eisenberg, Mindy

Optional Attendees: Peck, Gregory; Campbell, Ann; Minoli, Kevin; Nandi, Romell; Washington, Valerie; Hewitt, Julie; Goodin, John; Best-Wong, Benita

Categories: Blue Category

From: Peck, Gregory

Location: EPA 1201 Constiution Ave NW, Washington DC 20004 WJCE 3233 Please call 2025645700 for escort

Importance: Normal

Subject: ~~Accepted: Discussion of Economic~~ Analysis Approach and OMB Engagement on WOTUS Call

Nonresponsive Conference Code/ Ex. 6

Start Date/Time: Tue 4/18/2017 1:00:00 PM

End Date/Time: Tue 4/18/2017 1:45:00 PM

To: Craig Schmauder[craig.r.schmauder.civ@mail.mil]
From: Peck, Gregory
Sent: Tue 4/4/2017 12:38:24 PM
Subject: Fw: [Non-DoD Source] RE: Clean Water Rule Update? (UNCLASSIFIED)

From: Moyer, Jennifer A CIV USARMY CEHQ (US) <Jennifer.A.Moyer@usace.army.mil>
Sent: Tuesday, April 4, 2017 6:39 AM
To: Goodin, John
Cc: David.F.Dale@usace.army.mil; Cooper, David R SES USARMY CEHQ (US); Jensen, Stacey M CIV USARMY HQDA (US); Cindy Barger; Eisenberg, Mindy; Peck, Gregory
Subject: Re: [Non-DoD Source] RE: Clean Water Rule Update? (UNCLASSIFIED)

John,

I can circle back with Vlad. I need to speak with him on another matter anyway.

I'll let you know how it goes.

Jennifer

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message

From: Goodin, John

Sent: Monday, April 3, 2017 17:02

To: Moyer, Jennifer A CIV USARMY CEHQ (US)

Cc: Dale, David F Jr SES CELRD CELRD (US); Cooper, David R SES USARMY CEHQ (US); Jensen, Stacey M CIV USARMY HQDA (US); Cindy S. Barger; Eisenberg, Mindy; Peck, Gregory

Subject: [Non-DoD Source] RE: Clean Water Rule Update? (UNCLASSIFIED)

Deliberative Process / Ex. 5

Thanks
John

-----Original Message-----

From: Moyer, Jennifer A CIV USARMY CEHQ (US) [mailto:Jennifer.A.Moyer@usace.army.mil]

Sent: Monday, April 03, 2017 8:27 AM

To: Goodin, John <Goodin.John@epa.gov>

Cc: David.F.Dale@usace.army.mil; Cooper, David R SES USARMY CEHQ (US) <David.R.Cooper@usace.army.mil>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Cindy Barger <cindy.s.barger.civ@mail.mil>

Subject: FW: Clean Water Rule Update? (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

John,

Deliberative Process / Ex. 5

Thanks.

Jennifer

Jennifer Moyer
Chief, Regulatory Program
Headquarters, U.S. Army Corps of Engineers
441 G Street, NW
Washington, DC 20314
202-761-4598 (office)
703-589-5746 (mobile)

-----Original Message-----

From: Dorjets, Vlad EOP/OMB [mailto:Vladik_Dorjets@omb.eop.gov]
Sent: Friday, March 31, 2017 5:45 PM
To: 'Goodin, John' <Goodin.John@epa.gov>; Moyer, Jennifer A CIV USARMY CEHQ (US) <Jennifer.A.Moyer@usace.army.mil>
Cc: Owens, Nicole <Owens.Nicole@epa.gov>; 'Peck, Gregory' <Peck.Gregory@epa.gov>; Smith, Charles R "Chip" <charles.r.smith567.civ@mail.mil>
Subject: Clean Water Rule Update?

John/Jennifer,

Deliberative Process / Ex. 5

Vlad

CLASSIFICATION: UNCLASSIFIED

To: Penman, Crystal[Penman.Crystal@epa.gov]
From: Peck, Gregory
Sent: Mon 4/3/2017 3:45:57 PM
Subject: Copy
2017 WOTUS 2 Draft Proposed Rule Text 3 30 17v2.docx

Hi Crystal

Can you please make a copy of this for me – thanks

Greg

Gregory E. Peck

Chief of Staff

Office of Water

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue

Washington, D.C. 20460

202-564-5700

To: Schmauder, Craig R SES (US)[craig.r.schmauder.civ@mail.mil]
From: Peck, Gregory
Sent: Fri 3/31/2017 1:56:32 PM
Subject: FW: Draft compilation of record references to Plurality
Scalia in preamble TSD RTC.docx

Gregory E. Peck

Chief of Staff

Office of Water

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue

Washington, D.C. 20460

202-564-5700

From: Eisenberg, Mindy
Sent: Friday, March 31, 2017 9:54 AM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; David.F.Dale@usace.army.mil; Cindy Barger <cindy.s.barger.civ@mail.mil>; Moyer, Jennifer A CIV USARMY CEHQ (US) <Jennifer.A.Moyer@usace.army.mil>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Draft compilation of record references to Plurality

All,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks!

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
From: Peck, Gregory
Sent: Tue 3/28/2017 2:47:25 PM
Subject: Connectivity: FW: Due 4/11: Advanced Notification Manuscript--#ORD020908 Leibowitz, Connectivity of streams and wetlands to downstream waters - comments requested by April 11
Leibowitz-CONNAP17-Manuscript Final.docx

Mike:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

To: Peterson, Jeff[Peterson.Jeff@epa.gov]
From: Peck, Gregory
Sent: Tue 3/28/2017 1:59:36 PM
Subject: Re: Connectivity: FW: Due 4/11: Advanced Notification Manuscript--#ORD020908 Leibowitz, Connectivity of streams and wetlands to downstream waters - comments requested by April 11

I haven't seen this. I'll check it out. Thanks Jeff.

Greg

Gregory E. Peck
Chief of Staff
Office of Water
U.S.Environmental Protection Agency
Washington, DC 20460

(202)564-5700

On Mar 28, 2017, at 9:57 AM, Peterson, Jeff <Peterson.Jeff@epa.gov> wrote:

Hi Greg

Checking to see if you had seen this in another email string or elsewhere...note that the intro includes discussion of the rule.

Jeff Peterson
Senior Policy Advisor
Office of Water
US Environmental Protection Agency
Washington, D.C. 20460
202-564-3745
Cell: 202-805-0694

Internal, Deliberative, Not for Release

From: Metchis, Karen
Sent: Tuesday, March 28, 2017 9:07 AM
To: Peterson, Jeff <Peterson.Jeff@epa.gov>

Subject: Connectivity: FW: Due 4/11: Advanced Notification Manuscript--#ORD020908
Leibowitz, Connectivity of streams and wetlands to downstream waters - comments
requested by April 11

Deliberative Process / Ex. 5

Karen Metchis

EPA Office of Water

WJC East 3311T

202-564-0734

metchis.karen@epa.gov

<http://water.epa.gov/scitech/climatechange/>

From: Emerson, Vanessa

Sent: Tuesday, March 28, 2017 6:41 AM

To: Balasa, Kate <balasa.kate@epa.gov>; Corona, Joel <Corona.Joel@epa.gov>; Reiley, Mary <Reiley.Mary@epa.gov>; Metchis, Karen <Metchis.Karen@epa.gov>; Ohanian, Edward <Ohanian.Edward@epa.gov>; Zahreddine, Phil <Zahreddine.Phil@epa.gov>; Rogers, Emily <rogers.emily@epa.gov>; Smith, Bernicel <Smith.Bernicel@epa.gov>; Smith, Lameka <Smith.Lameka@epa.gov>; Soares, Barbara <soares.barbara@epa.gov>; Tucker, Nicole <Tucker.Nicole@epa.gov>

Cc: Snowden, Belinda <snowden.belinda@epa.gov>

Subject: Due 4/11: Advanced Notification Manuscript--#ORD020908 Leibowitz,
Connectivity of streams and wetlands to downstream waters - comments requested by
April 11

Good morning,

Deliberative Process / Ex. 5

Thank you,

Vanessa

From: Reiley, Mary

Sent: Monday, March 27, 2017 9:26 PM

To: Emerson, Vanessa <emerson.vanessa@epa.gov>; Snowden, Belinda <snowden.belinda@epa.gov>

Subject: A new one! FW: Advanced Notification Manuscript--#ORD020908 Leibowitz, Connectivity of streams and wetlands to downstream waters - comments requested by April 11

From: vanDrunick, Suzanne

Sent: Monday, March 27, 2017 7:01 PM

To: Reiley, Mary <Reiley.Mary@epa.gov>; Ohanian, Edward <Ohanian.Edward@epa.gov>

Cc: Matney, Rachel <Matney.Rachel@epa.gov>; Williams, Joe <Williams.Joe@epa.gov>

Subject: Advanced Notification Manuscript--#ORD020908 Leibowitz, Connectivity of streams and wetlands to downstream waters - comments requested by April 11

Dear Mary and Ed

Deliberative Process / Ex. 5

Thank you

Suzanne

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

<Leibowitz-CONNAP17-Manuscript Final.docx>

<Leibowitz-CONNAP17-High Profile Fact Sheet.docx>

To: Orvin, Chris[Orvin.Chris@epa.gov]
From: Peck, Gregory
Sent: Mon 3/6/2017 5:00:55 PM
Subject: RE: Draft TARGET response letter on CWR

Thanks Donald (may I call you Donald sir?)

Gregory E. Peck

Chief of Staff

Office of Water

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue

Washington, D.C. 20460

202-564-5700

From: Orvin, Chris
Sent: Monday, March 06, 2017 11:58 AM
To: Peck, Gregory <Peck.Gregory@epa.gov>
Subject: Draft TARGET response letter on CWR

Greg – here is a draft.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Let me know what

you think.

I'm going to turn to the Rep E.B. Johnson and Rep L. Smith letters after our noon meeting; hope to get you drafts this afternoon.

Thanks,

Chris Orvin
U.S Environmental Protection Agency

Special Assistant to the Chief of Staff
Office of Water

202-564-0430

To: Loop, Travis[Loop.Travis@epa.gov]
Cc: Grantham, Nancy[Grantham.Nancy@epa.gov]; Dennis, Allison[Dennis.Allison@epa.gov]
From: Peck, Gregory
Sent: Mon 3/6/2017 3:42:28 PM
Subject: RE: Clean Water Act

Deliberative Process / Ex. 5

Gregory E. Peck

Chief of Staff

Office of Water

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue

Washington, D.C. 20460

202-564-5700

From: Loop, Travis
Sent: Monday, March 06, 2017 10:35 AM
To: Peck, Gregory <Peck.Gregory@epa.gov>
Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>
Subject: RE: Clean Water Act

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Travis Loop

Director of Communications
Office of Water

U.S. Environmental Protection Agency

202-870-6922

loop.travis@epa.gov

From: Grantham, Nancy

Sent: Monday, March 06, 2017 6:49 AM

To: Loop, Travis <Loop.Travis@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>

Subject: FW: Clean Water Act

Does ow have the answer to question below? thanks ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Gray, David

Sent: Thursday, March 02, 2017 11:49 AM

To: Press <Press@epa.gov>

Cc: regionalpress <regionalpress@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>

Subject: FW: Clean Water Act

This one is for HQ.

From: Hardy, Steve [<mailto:shardy@theadvocate.com>]
Sent: Thursday, March 02, 2017 10:47 AM
To: Durant, Jennah <Durant.Jennah@epa.gov>
Subject: RE: Clean Water Act

Hey Jennah, I wanted to circle back and see if there's anyone at the EPA I could talk to about the WOTUS order. I can talk to them just on background if that makes thing easier for you.

From: Hardy, Steve
Sent: Tuesday, February 28, 2017 3:40 PM
To: 'Durant, Jennah'
Subject: Clean Water Act

Jennah, per our phone conversation, I'm trying to determine the potential local impact of the president's executive order this afternoon. Pres. Trump has ordered the EPA to review the 2015 Water of the United States rule. Is there a document somewhere that shows which bodies of water (especially in Louisiana) were firmly included in the Clean Water Act as a result of the 2015 rule? I'm trying to find out which bodies could change if the administration amends it. Not on a tight deadline but would appreciate a response as soon as its available. Thanks

Steve

THE ADVOCATE

Steve Hardy

Reporter

shardy@theadvocate.com
www.theadvocate.com

Tel: (225) 388-0099
Cell: (225) 329-4068
Fax: (225) 344-3624

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To: Goodin, John[Goodin.John@epa.gov]
Cc: Shapiro, Mike[Shapiro.Mike@epa.gov]
From: Peck, Gregory
Sent: Wed 3/1/2017 8:21:07 PM
Subject: Re: Meeting w/ Jackson: Clean Water Rule

Deliberative Process / Ex. 5

Greg
Gregory E. Peck
Chief of Staff
Office of Water
U.S.Environmental Protection Agency
Washington, DC 20460

(202)564-5700

On Mar 1, 2017, at 3:13 PM, Goodin, John <Goodin.John@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Campbell, Ann
Sent: Wednesday, March 01, 2017 2:20 PM
To: Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: Meeting w/ Jackson: Clean Water Rule

Deliberative Process / Ex. 5

Subject: Clean Water Rule
Location: EPA 1201 Constitution Ave, NW Washington DC WJCE 3233 Please call 202-564-5700 for escort

Start: Thu 3/9/2017 3:30 PM
End: Thu 3/9/2017 4:30 PM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Shapiro, Mike

Required Attendees: Campbell, Ann; ian.p.osullivan@usace.army.mil

Categories: Blue Category

To: Orvin, Chris[Orvin.Chris@epa.gov]
Cc: Owen, Gib A CIV USARMY HQDA ASA CW[gib.a.owen.civ@mail.mil]
From: Peck, Gregory
Sent: Wed 3/1/2017 2:50:33 PM
Subject: Re: CWR POC (UNCLASSIFIED//FOUO)

Thanks

Gregory E. Peck
Chief of Staff
Office of Water
U.S.Environmental Protection Agency
Washington, DC 20460

(202)564-5700

On Mar 1, 2017, at 9:39 AM, Orvin, Chris <Orvin.Chris@epa.gov> wrote:

Greg, Gib:

Here is the link to the page with the notice of intention:

<https://www.epa.gov/cleanwaterrule/notice-intention-review-and-rescind-or-revise-clean-water-rule>

The actual PDF is on that page, but here is the direct link:

https://www.epa.gov/sites/production/files/2017-02/documents/cwr_fr_notice_prepublication_version.pdf

And the lead graphic on the CWR page also has some plain language about the EO, in case that's helpful too: <https://www.epa.gov/cleanwaterrule>

Thanks,

Chris Orvin
U.S Environmental Protection Agency

Special Assistant to the Chief of Staff

Office of Water

202-564-0430

From: Peck, Gregory
Sent: Wednesday, March 01, 2017 9:30 AM
To: Orvin, Chris <Orvin.Chris@epa.gov>
Cc: Owen, Gib A CIV USARMY HQDA ASA CW <gib.a.owen.civ@mail.mil>
Subject: Fwd: CWR POC (UNCLASSIFIED//FOUO)

Chris. Can you send Gib the link to EPAs website notice of intent to rewrite the clean water rule. It was posted yesterday.

Thanks

Gregory E. Peck

Chief of Staff

Office of Water

U.S.Environmental Protection Agency

Washington, DC 20460

(202)564-5700

Begin forwarded message:

From: "Owen, Gib A CIV USARMY HQDA ASA CW (US)"
<gib.a.owen.civ@mail.mil>
Date: March 1, 2017 at 9:26:50 AM EST
To: "Peck, Gregory" <Peck.Gregory@epa.gov>
Cc: "Schmauder, Craig R SES (US)" <craig.r.schmauder.civ@mail.mil>
Subject: RE: CWR POC (UNCLASSIFIED//FOUO)

CLASSIFICATION: UNCLASSIFIED//FOR OFFICIAL USE ONLY

Greg

Can you have someone send me the link to the information on your site and we will work to echo what you all have posted?

Gib

Gib Owen
Water Resources Policy & Legislation
Office of the Assistant Secretary of the Army for Civil Works
Washington DC
gib.a.owen.civ@mail.mil
703 695 4641 - Office
571 274 1929 - Cell

<(((^>`.,.,.´~´.,.,.><(((^>`.,.,.´~´.,.,.><(((^`

-----Original Message-----

From: Peck, Gregory [<mailto:Peck.Gregory@epa.gov>]
Sent: Wednesday, March 01, 2017 8:42 AM
To: Owen, Gib A CIV USARMY HQDA ASA CW (US) <gib.a.owen.civ@mail.mil>
Cc: Schmauder, Craig R SES (US) <craig.r.schmauder.civ@mail.mil>
Subject: [Non-DoD Source] Re: CWR POC (UNCLASSIFIED//FOUO)

Hey Gib. We have already posted the FR notice announcing the rule on our web site. You guys may want to also. We'll let the notice speak for itself.

Thanks!

Gregory E. Peck
Chief of Staff
Office of Water
U.S.Environmental Protection Agency
Washington, DC 20460

(202)564-5700

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CHARGE QUESTIONS AND DRAFT RESPONSES

- **Question: 1-** How would you like to see the concepts of 'relatively permanent' and 'continuous surface connection' be defined? How would you like to see the agencies interpret 'consistent with Scalia'? Are there particular features or implications of any such approaches that the agencies should be mindful of in developing the step 2 proposed rule?

1.a. How would you like to see the concepts of 'relatively permanent' and 'continuous surface connection' be defined?

Background:

In the *Rapanos v. United States* 547 U.S. 715 (2006), the Supreme Court provided a plurality decision of four justices, led by Justice Scalia. The decision basically challenged federal jurisdiction to regulate isolated wetlands under the Clean Water Act. It also applied a very narrow interpretation to CWA jurisdiction, extending the agencies' regulatory authority only to "relatively permanent, standing or continuously flowing bodies of water" connected to traditional navigable waters, and to "wetlands with a continuous surface connection to" such relatively permanent waters. Justice Kennedy focused on whether the waters in question have a "significant nexus" to traditional navigable waters, *i.e.*, whether they, "either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable.'"

The LGAC has previously commented that they would prefer a clear and simple approach for jurisdictional determinations such as an approach that yields categorical answers of jurisdiction in these categories: 'yes', 'no' or 'maybe' responses. Any of these answers are sufficient for local governments if these answers are provided in a timely fashion.

Recommendation: EPA and the Corps should apply simple approaches that yield jurisdictional calls with simple criteria that give a 'yes', 'no' or 'maybe' answer. (LGAC Report 2014)

[Council Member Brad Pierce-City of Aurora, CO Comments]

Potential Approaches to "Relatively Permanent" Waters

The potential approaches to include streams with seasonal flows or streams with another outflow will capture ephemeral and intermittent streams into the definition of "relatively permanent" waters, which we believe is inappropriate. Each of these approaches would need to define metrics and thresholds at which a stream is considered "relatively permanent," and such metrics will vary geographically on a case-by-case basis and the definition of thresholds will be subjective.

Including perennial streams only as "relatively permanent waters" is the appropriate approach. EPA should ensure that ephemeral and intermittent streams and erosional features in the arid West, such as arroyos and dry washes, are non-jurisdictional. Ditches and canals that only carry intermittent flows of water and that are not a relocated tributary or excavated in a tributary, as well as stormwater control features that periodically flow in response to significant precipitation events, should also be exempted.

Potential Approaches to Wetlands with a "Continuous Surface Connection"

The potential approach to develop metrics to identify "some degree of connectivity" should not be utilized. This will require subjectively defining thresholds for what constitutes a significant degree of connectivity, which should be avoided. While including as jurisdictional those wetlands that directly touch jurisdictional waters is appropriate, there may also be circumstances where the current

practice of considering wetlands with a continuous surface connection, regardless of distance, to be jurisdictional is not appropriate. Such connections should be perennial and should not include ephemeral and intermittent connections.

Wetlands with permanent, continuously flowing, surface connections should be included. Where such connections do not exist, the wetlands should be exempted. EPA should ensure that where there are overland flows through dryland breaks to a WOTUS, this type of break renders a tributary up gradient of the dryland break to be non-jurisdictional. EPA should explicitly recognize that features where water may be present (for instance, in residual ponds resulting from placer or other mining efforts) are not jurisdictional where a continuous physical channel is absent, a bed-and-bank is not discernible, an ordinary high water mark is not observable, and/or there are no flow characteristics.

1.b. How would you like to see the agencies interpret 'consistent with Scalia'?

Background:

EPA and the Corps issued the 2008 guidance document following the Rapanos case that was intended to clarify WOTUS. It does so by asserting CWA jurisdiction over waters that would meet *either* the plurality test (relatively permanent; continuous surface connection) *or* the Kennedy test (significant nexus). In the Guidance and Memorandum of Agreement between the Corps and EPA, there is a list of key questions and answers, that generally breaks the jurisdictional analysis into three major categories. **NOTE: This guidance did not go out sufficiently for public review and was not communicated well to local governments and other stakeholders.** The first, and presumably more manageable, category includes those waters over which CWA jurisdiction will be asserted in every case; those that do not and the maybe that have a 'significant nexus'.

1.c. Are there particular features or implications of any such approaches that the agencies should be mindful of in developing the step 2 proposed rule?

💡Recommendation: Criteria as outlined in the 2008 guidance and or modified can be modified to address clearer definitions and pose a series of questions of relatively permanent or continuous. If answers are 'yes' or 'no' it leads to a 'yes', 'no' or 'maybe' jurisdictional determination.

💡Recommendation: EPA and the Corps should establish an Interagency Taskforce to develop the matrix of questions to determine 'permanent' and 'continuous' indicators. Their results should be published and the public given the opportunity to give comment. (LGAC 2014 Report)

💡Recommendation: An application for Smart phone or hand-held computer should be developed to give a quick jurisdictional determination and sent to all interested parties. (LGAC 2014 Report)

💡Recommendation: Manmade conveyances, stormwater treatment systems, ditches, farm and irrigation ditches and green infrastructure amenities should be exempt from jurisdiction. Where possible, EPA and the Corps should work with State, local and tribal governments to map these features as well. (NOTE: Drinking water and wastewater treatment utilities may have these features mapped as part of Asset Management features). (LGAC 2014 Report)

Waters of the U.S.-June 07, 2017

- **Question 2-** What opportunities and challenges exist for your locality with relying on Justice Scalia's opinion?

Background:

Cities and communities care deeply about the quality of water. A concern is where interpretative rules that do not provide sufficient clarity, may add to costs and delays without causing important improvement to water quality.

(Goodman letter) We understand that the goal is to make it easier to identify WOTUS a rule interpreting Scalia may not draw bright enough lines for local governments to easily identify those waters affected. Therefore, the use of the Scalia approach of itself is unlikely to significantly resolve all of the considerable uncertainty surrounding CWA jurisdiction (either then or now), or prevent continuing litigation to test the agencies' interpretations in the federal courts. However, the 2008 guidance does have criteria that will pose less uncertainty and yield faster results. If the guidance were to be revised to include clearer definitions and for review to get input from states, local and tribal governments and other stakeholders it could perhaps help to resolve these issues.

◆ **Recommendation:** Relying on a modified Scalia approach with modified 2008 guidance can provide a clearer certainty of federal jurisdictional waters which will lead to more certainty and more ease in permitting.

- **Question 3:** Are there other approaches to defining "waters of the U.S." that you would like the agencies to consider to providing clarity and regulatory certainty?

Background:

The 2008 guidance document issue post Rapanos offers assistance and criteria to assess jurisdiction of WOTUS (post Rapanos). It is consistent with the Scalia approach but also asserts a modified CWA jurisdiction over some waters. This approach would reflect the opportunity to cover waters significant to states, locals and tribes. The WOTUS rule also confirms certain exemptions from federal jurisdiction, offering federal clarification where there has previously been uncertainty. These exemptions include stormwater detention ponds, wastewater treatment facilities, and "puddles."

◆ **Recommendation:** The LGAC recommends that a similar approach articulated in the guidance to the 2008 guidance be used to revise the WOTUS rule.

◆ **Recommendation:** "Significant nexus" test refers to waters that "significantly affect the chemical, physical, **and** biological integrity" of traditionally navigable waters, the 2015 WOTUS Rule covers waters that affect the "chemical, physical, **or** biological integrity" of navigable waters. That should be changed to 'and' and include all three parameters. (LGAC 2014 Report)

◆ **Recommendation:** The 2015 rule regulates any area having a trace amount of water if it also has – or ever had – a bed, banks, and an ordinary high water mark (OHWM). This could include many stormwater channels and other features that are almost perpetually dry. Any channel that is part of a stormwater, drinking water utility treatment system should be exempt from a WOTUS jurisdictional determination. For the 2017 revised rule, there could be more predictability and certainty in general if there is a dry bed with a OHWM (with historical aerial or infrared photography that it can be established a WOTUS).

- **Question 4-**The agencies' economic analysis for step 2 intends to review programs under CWA 303, 311, 401, 402 and 404. Are there any other programs specific to your locality that could be affected but would not be captured in such an economic analysis?

The Economic Analysis should be broad to include impacts to not only Clean Water Act programs but also state and local programs. Below are programs from a local government perspective that should be considered in the Economic Analysis:

Source Water Protection-There is a general consensus that protecting the nation's water resources is important to local government. Local governments realize that poor water quality affects the health and economies of their

Waters of the U.S.-June 07, 2017

communities, disproportionately impacting those that are low-income. Local governments also realize that protecting source water bodies like rivers, lakes, streams, wetlands and groundwater is paramount to protecting drinking water. (LGAC 2016 Drinking Water Report). **Under the Safe Drinking Water Act**, Source Water Assessments (SWAs) provide information about sources of drinking water used by public water systems. SWAs are studies or reports developed by states to help local governments, water utilities, and others protect sources of drinking water and are done differently by each state. Each program is adapted to a state's water resources and drinking water needs. To protect source water, the tools of the Safe Drinking Water Act (SDWA) and Clean Water Act (CWA) programs are utilized to protect source water. Additional protection tools can be found in other EPA programs and various agricultural programs. Changes made to CWA programs may greatly impact state and local source water protection programs and plans. This could have significant economic impacts to local communities. For example, in Flint, Michigan shifting the source water to the Detroit River water resulted in significant deterioration of water quality that produced significant public health and economic problems. In Portland, Oregon where source water is protected it results in less cost to the rate payers by having Clean Water Protection programs in place. It is unclear how changes in a revised rule will impact streams and tributaries that impact local sources of drinking water. If adequate CWA protections are not in place it could have significant negative economic impacts to water utilities. This costs are likely be transferred to local governments and rate payers. It is also unclear how this may impact the prevalence of toxic algal blooms which have proved very costly on drinking water.

CWA Section 402 - The NPDES permits and discharges could hold significant economic issues for local governments in regard to WOTUS for wastewater treatment, stormwater management, CSOs, and application of pesticides (used for vector control). WOTUS IN 2015 had been a concern about expanded federal jurisdiction to previously unregulated streams, ditches, and wetlands. However, the final rule includes exclusions beneficial for those that operate MS4s. The rule includes key exclusions that may be useful for localities. The rule retains a long-standing exclusion for "waste treatment systems," such as treatment ponds and lagoons. It also adds new exclusions for artificially created ponds, settling basins, construction and mining excavation pits, and wastewater recycling structures. Lastly, the rule finally codifies the well-understood principle that the CWA does not apply to groundwater. For MS4s, the primary concern about the rule has been that it could potentially be used as parts of an MS4 – including stormwater drainage ditches, BMPs, and green infrastructure projects – are "waters of the US." That could mean, for example, that NPDES permit coverage would be required to discharge **into** an MS4 or that a CWA 404 permit would be required to do maintenance on a BMP. The final rule includes, for the first time, a regulatory exclusion for "Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land." However, the exclusion does not apply to ditches that were created in previously existing streams or wetlands. The rule's exclusions are important because they take precedence over the rule's jurisdictional tests. For example, a stormwater conveyance ditch that qualifies for the stormwater exclusion would be excluded from CWA jurisdiction even if the ditch would be considered a jurisdictional water under the tributary test. Furthermore, in a reversal of EPA and the Corps' previous position, the agencies stated that they do not retain any discretion to extend CWA jurisdiction to water features that qualify for one of the rule's exclusions. It is unclear how a revised rule will impact Section 402 permits. Potentially, Section 402 permits could prove more costly than Section 404 permitting at the local level in regard to stormwater and wastewater treatment.

Pesticide Applications in Waters of the U.S.- Since 2011, pesticide applications into, over, or near WOTUS are permitted under the CWA National Pollutant Discharge Elimination System (NPDES) Program due to a 2009 U.S. Court of Appeals for the Sixth Circuit ruling. Agricultural producers, pesticide applicators and local governments have opposed or expressed concerns on the permitting largely on the grounds that it is duplicative and unnecessary to regulate pesticides applied in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Local governments, mainly county governments are largely responsible for vector control programs to manage mosquitos and spraying of insecticides to reduce vectors and public health concerns. Although the CWR would have arguably expanded the scope of the waters requiring pesticide permitting, the replacement or elimination of the CWR will not end NPDES requirements for pesticides however it may provide opportunity to clarify what discharge waters are subject to federal versus state permits.

Section 303 (d)- Currently, The National Rivers and Streams Assessment (NRSA) 2008-2009 report provides information on the biological and recreational condition of the nation's rivers and streams and the key stressors that affect them. The Report indicated that about half of our nation's streams (some of which provide sources of drinking water) have poor water quality. Poorer water quality could result in significant treatment costs such as Impaired Water sites under CWA Section 303(d) and transfer the costs to local governments. In addition, communities that rely on these water bodies for drinking water and source water the cost will ultimately be transferred to rate payers having a significant economic impact to local governments. It is uncertain how changes in a revised WOTUS rule will impact on local governments and their local efforts to improve access to clean water.

Section 319 and Other Grants-It is uncertain as to how the determination of WOTUS will impact grants to states and

communities. A grant may be given a priority if it given to protect a Water of the U.S. It is uncertain how that would impact states and communities.

The Coastal Zone Management Act (CZMA) of 1972 provides for the management of the nation's coastal resources, including the Great Lakes. The goal is to "preserve, protect, develop, and where possible, to restore or enhance the resources of the nation's coastal zone." it is administered by the National Oceanic and Atmospheric Administration (NOAA). The National Coastal Zone Management Program aims to balance competing land and water issues through state and territorial coastal management programs through state and locally managed Coastal Zone permits. These CZMA Programs work in tandem with the many tools of the CWA including Section 404. The Economic Analysis should include an assessment of the economic impact to coastal resources and wetlands, including an economic impact analysis to water dependent industries such as fishery (salmon and seafood industry), tourism, and other water dependent industries. For example, in the Puget Sound region, fish hatchery and harvest operations reeled in about \$18 million to tribal personal income. In areas where the average annual per capita income is around \$10,000, a decline in the availability of healthy fish can significantly impact the economies of these communities. (LGAC Drinking Water Report). An example, the LGAC worked with is evaluating the impacts of the Deepwater Horizon Spill to local governments in the Gulf of Mexico. The Gulf fishing and tourism industries produce \$3.5 - \$4.5 billion a year. Without adequate federal CWA authorities in place other potential impacts could occur having deleterious impacts to local economies and natural resources.

- **Question 5- What additional information can you provide from a local government perspective that EPA should be aware of?**

DEFINITIONS (LGAC 2014 Report)

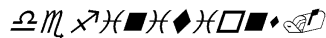
Background:

The LGAC fully supports and endorses EPA's efforts for clarification of Waters of the United States. These improvements are long overdue. The LGAC highlights clarity in definitions is critical for the revised rule. While the LGAC does not have specific language recommendations for all of the definitions of a revised rule, the LGAC offers the following for the EPA to consider including, redefining or clarifying in the rule.

These recommendations for definitions are brought forward to consider in the 2017 WOTUS Rule.

Recommendations:

- ◆ *The LGAC recommends that EPA should, where appropriate, use definitions that are used consistently across all of the federal agencies, e.g. EPA, Army Corps of Engineers, Federal Emergency Management Agency, Department of Agriculture, U.S. Geological Survey and U.S. Forest Services.*
- ◆ *The LGAC recommends that an Interagency Workgroup be tasked to develop a glossary of definitions and publish this Interagency Glossary of Terms, following public review.*
- ◆ *The LGAC recommends that definitions be practical, written in plain English, and be enforceable.*
- ◆ *The LGAC recommends that narrative descriptions with examples be provided to augment the definitions, as well as pictures, where this could achieve greater clarity.*
- ◆ *The LGAC recommends that the public have the opportunity to comment on these proposed*



☛ *The LGAC recommends that the following terms, among others, be defined concisely and with clarity: 'other waters', 'significant nexus', 'adjacent' and 'upland'. Furthermore, the LGAC recommends 'upland' be defined based upon exclusion of what it is not.*

☛ *The LGAC recommends that EPA consider the following when defining these terms:*

Wetlands

☛ *The LGAC recommends that the current definition of wetlands be used: "areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas."*

Floodplains

☛ *The LGAC recommends using the definition of the Interagency Taskforce on Floodplains- "Floodplains include low-lying areas adjacent to and the water bodies of streams, rivers, lakes, estuaries, and coastal zones that are inundated or may become inundated as a result of changing conditions." The definition of floodplains should take into account movement of flood lines due to account extreme weather events.*

Riparian area

☛ *The LGAC recommends that riparian areas be defined as "an area bordering a water where surface or subsurface hydrology directly influence the ecological processes and plant and animal community structure in that area. Riparian areas are transitional areas between aquatic and terrestrial ecosystems that influence the exchange of energy and materials between those ecosystems."*

Floodway

☛ *The LGAC recommends that 'floodway' be defined as a flood course within the banks or within a canyon where water would be expected to flow under normal circumstances.*

Ditches

☛ *The LGAC recommends a clear definition of 'ditch' be provided in the proposed rule.*

☛ *The LGAC recommends the following Google Dictionary definition of 'ditch': a "narrow channel dug in the ground typically used for drainage". Examples listed are trench, croft, channel, dike, drain, watercourse conduits.*

Tributaries

☛ *The LGAC recommends a clear definition of 'tributaries' be included in the proposed rule using clarifying examples.*

☛ *The proposed rule refers to a term "rain dependent stream". The LGAC recommends that this term be defined and an example of a stream that is not rain dependent be provided.*

Significant Nexus

☛ *The LGAC regards this to be the most important definition contained within the proposed rule and at the heart of jurisprudence in the issue of Waters of the U.S. It is uncertain how 'significant' nexus would be interpreted so the Committee recommends EPA describe significant nexus such that it is in plain English, with specific terms and examples.*

◆ *The LGAC recommends that the agency consider all three parameters of water quality in this determination so that “the chemical, physical, and biological integrity of water” be the criteria used for ‘significant nexus’. Likewise, the LGAC does not agree that only one of these features be used as the benchmark, but that all three parameters of chemical, physical and biological integrity of a water body are all equally important.*

◆ *The LGAC does not agree with the term “significant effect” and also recommends language of “insignificant or speculative” be deleted.*

◆ *The LGAC is aware that the EPA charged the Science Advisory Board with interpreting significant nexus and connectivity based on the best science available. The LGAC is uncertain as to how the revised rule will make benefit of these important and critical definitions; however, the findings may be important to factor into a revised rule. (REWRITTEN from LGAC 2014 Report)*

[Representative Tom Sloan comments]

Intermittent streams, playa lakes, wetlands, and other waters:

1. In cooperation with states, the EPA to designate intermittent streams and other waters as non-waters of the U.S. based on the following criteria:

a. Seasonal flow of running or standing water— each state to develop its own criteria subject to EPA review and approval;

b. Because of the variability of conditions within and between states, the EPA to provide guidelines for state standards that include factors to be considered, but which do not constitute federal standards. Such factors to include average number of days of stream flow, seasonality of stream flow, rate of stream flow, TMDL levels during such periods, amount of water and TMDLs delivered to the 'next' body of water, and such other relevant factors as the Agency deems appropriate.

c. State standards/factors should reflect possible ground water recharge rates from intermittent streams, playa lakes, wetlands, and other waters. Similarly, factors should include potential contamination of ground water from such water bodies.

d. States shall develop metrics for each standard they propose and submit to the EPA for review and approval. EPA to have 120 days from receipt of a completed state plan to review, propose revisions, or deny the submitted standards and metrics. Failure to complete the analysis within 120 days, subject to the EPA and state agreeing on a time extension, shall result in the submitted standards and metrics being deemed accepted.

e. Three years after the state-submitted standards are accepted, each state shall submit a report to the EPA detailing whether the waters in question continue to meet the EPA-accepted standards, as determined by the state's metrics. The EPA shall determine whether each state shall submit subsequent reports on an annual or other timeline basis.

- If new, generally accepted scientific findings on issues that may affect water quality standards

related to intermittent streams, playa lakes, wetlands, or other designated waters are determined, the EPA may request states review their standards and submit proposed revised plans for the Agency's consideration and approval.

Permanent Bodies of Water:

- a. Some wetlands are seasonal and have been addressed above. For those that are permanent, states should be empowered to develop metrics that demonstrate whether the waters released from the wetlands to jurisdictional waters are "cleaner" than the waters that otherwise would flow to those jurisdictional waters if the wetlands were not present.
- b. States to submit proposed standards and measurement techniques to the EPA for review and approval. EPA to have 120 days from receipt of completed state plan to review, suggest revisions, and approve or deny the submitted plan. If the review is not completed within 120 days, subject to extension if the EPA and state agree, the submitted plan shall be deemed accepted.
- c. States to be encouraged to develop standards and metrics regarding waters from wetlands and other bodies' impact on ground water quality.

- **Question 6- Are there other issues the agencies should consider which would help ease the regulatory burden for implementation of WOTUS for state, local and tribal government?**

Background

The LGAC believes that clear boundaries of WOTUS jurisdiction and clear exemptions are crucial for the support of local governments. Clear boundaries provide for more equitable and predictable permitting and also for better protection of our water resources. (LGAC 2014 Report)

The LGAC concludes, based upon the testimony that we heard and the analysis of the Committee, that a revised rule can significantly clarify the historic confusion and uncertainty resulting from conflicting case law and Supreme Court decisions. (LGAC 2014 Report)

The LGAC has heard a broad level of concerns from municipal associations and county governments concerning MS4s. The LGAC is uncertain of what the regulatory impact will be on MS4s as the proposed rule is currently written. MS4s and green infrastructure are foundational to the continuum of care that is being implemented at the local level to improve water quality. (LGAC 2014 Report)

Much of the uncertainty of MS4s, stormwater and green infrastructure is centered on whether these collection systems or portions of the systems will be required to meet State Water Quality Standards (WQS) under Section 303(d) or potentially a total maximum daily load (TMDL) because they will now be considered a "water of the United States." WQS and TMDL were not designed for this application so application within a collection system seems improper. WQS define goals for a waterbody by designating its uses and setting criteria to protect those uses, but there is no established designated use for MS4s. Without a designated use, the default required designated use is as "fishable/swimmable," unless the state demonstrates that it is not attainable for one of six particular reasons, none of which is because

the waters serve as storm-water conveyances. A pending EPA proposed rule on water quality standards could make use designation analyses more stringent (i.e., by requiring a "highest attainable use" presumption). Also, if it is not deemed jurisdictional under Section 404 it will likely need a Section 402 permit and subject to WQS. (Goodman Letter)

There could be potential impacts to wastewater systems and the NPDES permitting related to these systems. Because of the exclusion language, the Agency did not seem to analyze the impact to wastewater systems but some cities have raised questions whether some part of combined sewer systems or other aspects of a wastewater treatment systems would be considered within the jurisdiction of the EPA based upon the WOTUS rule. (Goodman Letter)

Many communities already heavily focus on water quality programs and projects; these communities should be encouraged and incentivized to do more. A revised rule should recognize that much of the action towards cleaner water happens at the local level. High performing local agencies should be noted as following best practices and afforded a relaxed regulatory environment in those circumstances where water quality objectives are met and exceeded. (LGAC 2014 Report)

The LGAC believes that making jurisdiction calls of what is exempt and what is not in a timely fashion is critical to protecting water resources and providing predictability to state and local governments. The LGAC believes that easily accessible predictive tools need to be developed and utilized to speed this process. (LGAC 2014 Report)

Recommendations:

◆ *The LGAC recommends that the use of State General permits be expanded to reduce the regulatory burden and also be used for smaller projects with minimal impacts. It could also be used to address regional and state specific activities and types of water bodies. Under Section 404(e) of the Clean Water Act, the U.S. Army Corps of Engineers can issue general permits to authorize activities that have minimal individual and cumulative adverse environmental effects. Nationwide permits can authorize a wide variety of activities such as mooring buoys, residential developments, utility lines, road crossings, mining activities, wetland and stream restoration activities, and commercial shellfish aquaculture activities. All permits, whether individual or general, must be reissued every five years.*

◆ *The LGAC recommends that EPA clearly articulate jurisdictional waters in an outreach plan which, in plain English, describes these areas with a clear statement of why they are in need of protection. This will provide local governments with more certainty and assurance in communicating the rule to their communities. (LGAC 2014 Report)*

◆ *The LGAC highly recommends explicitly specifying when ditches would be considered jurisdictional. (LGAC 2014 Report)*

◆ *The LGAC recommends that manmade conveyance components of MS4s be exempt from Waters of the United States. This includes manmade green infrastructure, roads, pipes, manmade gutters, manmade ditches, manmade drains, and manmade ponds. (LGAC 2014 Report)*

- ◆ *The LGAC recommends that natural conveyance components of MS4s are included in Waters of the United States. This includes natural wetlands and associated modifications to natural wetlands. (LGAC 2014 Report)*
- ◆ *The LGAC recommends that green infrastructure projects be exempt from WOTUS and that they should be incentivized to protect water resources.. (LGAC 2014 Report)*
- ◆ *The LGAC recommends that there be some criteria which exempt certain activities in Waters of the U.S. for public safety and hazards. This is particularly critical in flood prone areas and for disadvantaged communities in floodways that may need to have emergency relief quickly and rapidly. (LGAC 2014 Report)*
- ◆ *The LGAC recommends that EPA work to identify regional areas where jurisdictional determinations could be problematic in terms of sea level rise and where groundwater and surface flow intermix. For example, it is unclear how the state of Florida juxtaposed nearly at sea level, will be categorized. In this specific region, conceivably all waters could potentially be jurisdictional. The LGAC recommends that specific guidance be developed to address and classify these areas with region-specific criteria used to assess this determination. (LGAC 2014 Report)*
- ◆ *The LGAC recommends that EPA, working with the Corps of Engineers, develop a tool for use by local governments which a permittee can use to assess their own jurisdictional status. For example, this could involve a simple categorical, printable questionnaire in a decision tree framework with questions aimed with an outcome of 'yes', 'no' or 'maybe-call your local Corps representative'. The LGAC recommends this method be computerized and developed as a smartphone application which yields a simple predictive outcome. (LGAC 2014 Report)*
- ◆ *The LGAC recommends that EPA work directly with stormwater associations to provide guidance to best address MS4s, stormwater controls, and their jurisdictional determinations. (LGAC 2014 Report)*
- ◆ *The LGAC recommends that EPA look to stormwater experts and the practical advice that stormwater professionals can lend to the final rule the EPA is considering in Waters of the U.S. (LGAC 2014 Report)*
- ◆ *The LGAC recommends addressing how mining impoundments or borrow pits will be addressed within jurisdiction of WOTUS. (LGAC 2014 Report)*
- ◆ *The LGAC recommends that regional and local technical manuals as well as other communication tools (e.g. checklists, smartphone apps, etc.) that account for geographic differences in each EPA region be developed to assist with jurisdictional calls. (LGAC 2014 Report)*
- ◆ *The LGAC recommends that EPA provide planning maps at the state level which could be used as a planning tool to ascertain jurisdictional probability with high certainty. Such mapping would include the Hydrologic Unit Codes (HUC) for waterways. (It is presumed that all waterways with a designation of HUC-12 or less will be included in WOTUS.) (LGAC 2014 Report)*

IMPLEMENTATION

Background

The LGAC heard a strong concern regarding implementation, especially from local governments. Several local agencies reported uncertainty in interpretation as well as uncertainty in time and cost to conclude the permit process. The rule language must be consistently interpreted by all parties including the EPA, the US Army Corps of Engineers and local agencies. The rule should stipulate responsiveness of permitting agencies. Otherwise, the LGAC is concerned that a revised rule could further delay permits at the local level. (LGAC 2014 Report)

Recommendations:

☛ *The LGAC recommends that the rule stipulate time frames for permit review and jurisdictional determinations. Time frames such as 60 to 90 days to obtain a permit would be well-received at the local level. (LGAC 2014 Report)*

☛ *The LGAC recommends that EPA more clearly identify how Preliminary Jurisdictional Determinations would be processed to avoid unnecessary permit delays. (Goodman Letter)*

☛ *The LGAC recommends that EPA Administrator work with the Chief of the US Army Corps of Engineers to determine a process to reduce the issue of permitting delays of Section 404 permits. These delays are a significant and a costly issue for local governments. (LGAC 2014 Report)*

☛ *The LGAC recommends that state agency staff be utilized to make jurisdictional calls and work in cooperation with local districts with subject matter expertise such as county-based Conservation Districts or water management districts (e.g. Florida Water Management District). These local agencies can work together with the Corps to streamline permitting. (LGAC 2014 Report)*

☛ *The LGAC recommends that EPA regionalize wetlands delineation manuals to take into account regional and local variability of vegetation, hydromorphology and hydroperiods. (LGAC 2014 Report)*

☛ *Recommendation: The LGAC recommends that State agencies be delegated the authority to make jurisdictional determinations. These determinations could be certified by the EPA and Corps District staff. Potentially, private sector firms and/or individuals could be certified to make these determinations. This could relieve overburdened federal agencies and accelerate the determination/permit process.*

☛ *Recommendation: EPA and the Corps should encourage and provide incentives for States and Tribes to identify and protect significant state or unique waters such as sources for drinking water to protect.*

☛ *Recommendation: EPA and the Corps should provide mapping of jurisdictional waters (8-Digit HUC). It should also be accessible by zip code and available online.*

☛ *The LGAC recommends that EPA work further with the Committee to develop a cohesive strategy to address local tools for stream and tributary protection so that it does not interfere with local governments protecting and maintaining water resources for its citizens and*

The LGAC strongly recommends that the EPA continue to explore how the SDWA and the CWA could be coordinated to better protect source water and our nation's water resources. In addition, the LGAC recommends that the EPA coordinate a Memorandum of Agreement with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) to explore ways to reduce agricultural runoff and improve soil health. (LGAC Drinking Water Report 2016)

The EPA should work with local communities to utilize the regulatory tools that the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA) provide in order to protect source water, especially for low-income, minority, rural and tribal communities where this threat remains. (LGAC Drinking Water Report 2016)

The LGAC strongly recommends that the EPA continue to explore how the SDWA and the CWA could be coordinated to better protect source water and our nation's water resources. In addition, the LGAC recommends that the EPA coordinate a Memorandum of Agreement with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) to explore ways to reduce agricultural runoff and improve soil health. (LGAC Drinking Water Report 2016)

STATE ASSUMPTION OF SECTION 404

Background

Under current regulations, states and some tribes may seek delegation to implement CWA § 404 which governs dredge and fill activities in wetlands and other waters. This CWA assumption allows a state or tribe to regulate those waters and to take jurisdictional responsibility to condition, approve or deny dredge and fill permits in lieu of the federal Section 404 program administered by the Corps and EPA. The state or tribal program must be approved by the EPA and the Corps of Engineers. States and tribes play a significant role in implement CWA Section 404 Program through assumption and to fully integrated and comprehensive water program addressing the full range of state, tribal, and CWA requirements. Assumption allows for flexibility, less time constraints and the ability to integrate state and local water quality objectives.

The State of Michigan has received delegation authority and the LGAC was briefed on their program. Under the Michigan program, the permitting process is more streamlined and has incorporated other state statutory programs like CWA § 401 certifications, dam safety and other state regulatory programs.¹ The average time of the permitting process is 21 days.

¹ "Wetlands Protection." Michigan Department of Environmental Quality. www.mi.gov/wetlands.

Based on the Michigan example, the LGAC believes that states may more effectively administer the Section 404 program, especially in addressing regional issues. States can more effectively interact with local governments, businesses, agriculture and private landowners. (LGAC 2014 Report)

Recommendations:

- ◆ *The LGAC believes that State Assumed CWA and tribal-led programs may provide substantial cost-savings in time and money and should be investigated further. (LGAC 2014 Report)*
- ◆ *The LGAC recommends that guidance be developed to facilitate State Assumption of the Section 404 program.*
- ◆ *In order for state assumed programs to be successful, adequate resources must be made available and comparable water quality protections must be adopted by the state or tribal government. Despite these perceived barriers, the LGAC believes this is a highly worthwhile approach. Incentivizing the delegation program could achieve a strong return on investment.(LGAC 2014 Report)*
- ◆ *Local agencies may also be more receptive to the rule if there are state-run programs which are more responsive to local and regional issues. (LGAC 2014 Report)*
- ◆ *The LGAC strongly suggests federal incentives for States and Tribes to assume CWA Section 404 program. These federal incentives should also provide technical, financial and staffing resources to assume the CWA 404 program. (LGAC 2014 Report)*

ENFORCEMENT**Background**

The LGAC believes that enforcement will be important in implementing the CWA programs to follow the proposed rule. It is not possible to ascertain the impacts of enforcement on local governments based on the proposed rule as written. The LGAC also believes that clarified definitions contained within a final rule will be critical to effective and equitable enforcement of the rule. (LGAC 2014 Report)

Recommendations

- ◆ *The LGAC recommends that flexibility is included within the regulatory context so that conservation practices can be considered nationwide and be consistent, particularly on agricultural lands. (LGAC 2014 Report)*
- ◆ *The EPA should work collaboratively with state regulators to reduce punitive approaches and increase facilitative solutions. Generally, communities facing fines and citations are already struggling with compliance. Fines rarely increase water quality; fines only reduce the local resources available to achieve compliance. A collaborative approach can be most effective in reaching water quality goals. (LGAC Drinking Water Report 2016)*
- ◆ *The LGAC recommends that EPA work with state and local governments once the final rule is developed regarding enforcement options. (LGAC 2014 Report)*

LOCAL SOLUTIONS -INTEGRATED PLANNING**Background**

The LGAC believes that the CWA has had tremendously positive impacts on the rivers and streams of the United States which in turn has led to economic prosperity and well-being for our nation's communities. Communities and local governments are spending millions of dollars to improve our waterways and drinking water supplies. Some states even have more protective water standards than those required by federal law. The LGAC noticed a general feeling of distrust that the 2015 rule generated. Further clarity on definitions, jurisdiction and exemptions should further aid Integrated Planning. However, it is uncertain how a final rule will factor in Integrated Planning efforts in general. Furthermore, there is a great deal of uncertainty how CWA 404 and the rule will impact local ordinances and how it can be integrated into state, tribal and local water quality plans. (LGAC 2014 Report)

Recommendations:

◆ *The LGAC recommends that EPA work with cities and communities on Integrated Water Quality Planning that will incorporate all of the Clean Water Act provisions into local plans. This planning process is already ongoing and the LGAC looks forward to these proactive approaches to address water quality concerns while providing green infrastructure and multi-use amenities to serve our public and create jobs. (LGAC 2014 Report)*

◆ *The LGAC recommends that EPA incentivize local, tribal and state agencies to engage in Integrated Water Quality Planning and develop policies, programs and projects that further the goals of the Clean Water Act. The rule should not in any way discourage local efforts to improve water quality through projects and programs. (LGAC 2014 Report)*

- **Question 7- What should the agencies consider in communicating the final rule to state, local and tribal governments to help them fully understand these regulatory changes and implementing them efficiently and most cost-effectively?**

Background

The LGAC believes that clear communication and outreach needs to happen at every level of government once the final rule is developed. There are many misconceptions and uncertainties regarding EPA, the Army Corps of Engineers, and the rule's impact on CWA programs.

The LGAC, consistent with concerns heard throughout the outreach process, noted the mixed messages relating to the economic analysis.

The LGAC recommends that the EPA share the LGAC findings and recommendations with the state environmental commissioners, state agricultural directors, state water directors, and other state officials. (LGAC Water Report 2014)

Recommendations:

- ◆ *The LGAC recommends that a Fact Sheet (one-page) be developed laying out the clear messaging of the revised rule. It should also have graphics and a side by side comparison of what the rule currently is and what the revised rule proposes should be developed and included to enhance public understanding of the rule. (LGAC Water Report 2014).*
 - ◆ *The LGAC believes it is important that EPA is aware of the potential for mixed messages in their communication with local agencies regarding the economic impact of the proposed rule. Based on the Workgroup's 2014 field meetings, local agencies were skeptical of EPA's strong statement that the proposed rule does not change the definition of the Waters of the U.S. Although this statement may be factually correct, what will likely occur in the field is that local agencies will experience a permitting environment in direct contrast to this statement, as jurisdictional assertion is expected to increase. It is important that the EPA and the US Army Corps of Engineers do not understate the impact the rule may have on local jurisdictions. And the economic analysis should include all Clean Water Act programs.(LGAC Water Report 2014)*
 - ◆*The LGAC recommends that the EPA continue to evolve and improve its communication with local governments, as well as EJ, agricultural and small communities with respect to the Waters of the United States.*
 - ◆*The LGAC recommends that EPA develop Fact Sheets to communicate the proposed changes in the WOTUS rule designed specifically for locally elected officials.*
 - ◆*The EPA should work with State Municipal Leagues and other intergovernmental information to distribute communication materials for local governments. (LGAC Drinking Water Report 2016)*
 - ◆ *In its annual or biannual meetings with State Environmental Commissioners, State Public Health Directors and State Agricultural Directors, the EPA should convene a special session on Waters of the U.S. and ways to assist local governments, EJ communities and rural communities. (LGAC Drinking Water Report 2016)*
- **Question 8- The Workgroup will also develop recommendations on how the EPA can better work with local governments and engage local governments on issues such as: What additional regulatory issues could be revised or clarified to more effectively to help local governments understand how this rule would apply? Are there additional policy discussions that could help address local questions about implementation, in agricultural and rural small communities? Are there other considerations such as ditch maintenance, stormwater management or green infrastructure?**
- 8.a. **What additional regulatory issues could be revised or clarified to more effectively to help local governments understand how this rule would apply?**

◆ *The LGAC recommends that EPA should consider the impacts of a revised rule on NPDES and Wastewater systems. (Goodman Letter).*

◆ *The LGAC recommends that EPA consider a bright-line on 'other waters' to provide more clarity on what is jurisdictional under the CWA. For example, it would be well-advised that EPA determine with accuracy what areas are considered to be ecologically significant and to list these areas and provide examples. (LGAC 2014 Report)*

8.b. Are there additional policy discussions that could help address local questions about implementation, in agricultural and rural small communities?

Background

The Small Community Advisory Subcommittee (SCAS) of the LGAC investigated in greater depth the agricultural related issues to the WOTUs rule. The SCAS had some observations from the testimony received. Also, several of the SCAS Members are also agricultural producers and work for the Conservation Districts. Due to lack of clear definitions and the Science Advisory Board's Report which contained even more uncertainty on connectivity and how that will be applied.

Agricultural issues remain an area where there is a great deal of uncertainty and confusion regarding WOTUS.. The SCAS believes that the agricultural community presents the greatest challenge but also offers the greatest receptivity to recognizing the importance of conservation and protection of our natural resources. Agriculture is a water-dependent business and cannot flourish without adequate supplies of clean and safe water.

Recommendations: (LGAC 2014 Report)

◆ *The LGAC recommends that EPA develop a "rural strategy" which would address the issue of Waters of the U.S. on agricultural lands and rural communities. This rural strategy could provide more comprehensive planning and resources to address the full range of water quality and community issues associated with rural America and disadvantaged small communities.*

◆ *The LGAC recommends that there be consistency between Natural Resources Conservation Services (NRCS) and EPA on interpretation of normal farming practices and that a clear definition of normal farming practices be included. Furthermore, the LGAC recommends a manual of agricultural exemptions be developed and published.*

◆ *The LGAC recommends that the jurisdiction of farm ponds, artificial lakes and ponds created by excavation and/or diking dry land for purposes of stock watering, irrigation, settling basins or rice production be excluded from WOTUS.*

◆ *The LGAC recommends that floodplains be established at a level of 50 year, 100 year and 500*



- ☛ *The LGAC was made aware of the State of Tennessee's Water Quality program, and the LGAC recommends that the EPA investigate this approach in regard to jurisdictional waters on agricultural lands.*
- ☛ *The LGAC recommends that EPA facilitate better working relationships with the Corps, especially in regard to agricultural lands.*
- ☛ *The LGAC recommends that dams and drainages designed for fire prevention be exempt from WOTUS.*
- ☛ *The LGAC recommends that settling ponds and basins be determined on a regional case by case specific basis.*
- ☛ *The LGAC recommends increasing the boundaries of riparian areas in the Conservation Reserve program so that they enhance protection of waters.*
- ☛ *The LGAC recommends that EPA continue to work with NRCS to incentivize farming practices that improve water quality.*

Prior Converted Croplands (Discussed by Jeff Witte)

Background:

The Clean Water Rule excludes Prior Converted Croplands (PCC) from the definition of "waters of the United States." (existing since 1992). The Rule also provides that even if another federal agency has deemed land to be PCC, the final authority regarding CWA jurisdiction remains with the EPA. Other provisions such as Swampbuster also incorporates a PCC exception but are administered by the USDA under the Food Security Act of 1985. The Act regulates federal benefits for farmers and includes provisions designed to discourage farming on converted wetlands. Under the Act, farmers who have altered a wetland after November 28, 1990, to make crop production possible are generally prohibited from receiving USDA-FSA-administered commodity, disaster, and conservation program benefits. Likewise, farmers who plant crops on wetlands converted between December 23, 1985, and November 28, 1990, are ineligible for program payments. Generally, drainage systems and other conversions in place before December 23, 1985, may continue in their existing form. The 2014 Farm Bill also reinstated a requirement that farmers must comply with Swampbuster provisions to receive crop insurance premium assistance beginning in 2015. The NRCS is responsible for making wetland determinations for purposes of USDA farm program eligibility. Once a certified wetlands determination is made (and given to the farmer via form NRCS-CPA-026), it is binding on the property. All determinations made after July 3, 1996, are automatically deemed "certified." Determinations made prior to that date may be considered certified if they meet certain conditions. If a certified wetlands determination exists, the NRCS may not issue a new determination, absent a request by the landowner and (1) a determination that natural changes have occurred to the topography or (2) an acknowledgment by NRCS that an error exists in the current report. It is uncertain how changes in the WOTUS rule will change the dates for PCC or Swampbuster provisions.

☛ **Recommendation:** A process for determining Prior Converted Croplands should be established with the new changes to the WOTUS rule. For example, what date should the PCC be referred to.

☛ **Recommendation:** On agricultural lands, the Department of Agriculture be given authority to make jurisdictional determinations. (LGAC 2014 Report)

Recommendations:

◆ *The LGAC recommends that normal agricultural practices be defined more effectively to achieve the desired results and to be accepted by the agricultural community. Normal farming practices are not limited to those listed and will change with advances in science and technology.*

◆ *There needs to be consistency between NRCS, EPA and other agencies involved in these issues. The SCAS believes that a glossary defining what agricultural exemptions are in a glossary will be helpful. Specifically, the LGAC has heard a great deal of concern from Northern Minnesota where there are non-tiled drainage ditches and also from agricultural communities in Georgia.*

◆ *The LGAC recommends more effective outreach to agricultural communities and small rural communities on this proposed rule.*

8.c. Are there other considerations such as ditch maintenance, stormwater management or green infrastructure?

Background

Rule language should not have broad inclusions and cities are concerned that jurisdictional calls will be dependent upon agency judgments and discretion for exclusions. The criteria need to be clear enough that cities do not have to either guess at application of a rule or wait for the agency to interpret a rule that creates uncertainty. It is unworkable for cities to rely on agency judgments and discretion for exclusions. There is a concern about the magnitude of the requests the agencies will be forced to address and the timeliness of the agencies response given any uncertainty of a new rule. Cities cannot be faced with significant delays to address critical storm-water infrastructure while waiting for agency action. Cities should be provided clarity by the agencies so that they can effectively plan and budget for the operation and maintenance of the storm-water collection systems without the uncertainty of the discretion of the agencies and when it will receive that agency judgment. In addition, without a specific exemption for MS4 systems including drains, roads, pipes, curbs, gutters, ditches and other components that channel runoff, as well as non-MS4 storm-water systems and features/components, EPA and Army Corps open the door for litigation and citizen suits that could determine that they are considered a "Waters of the U.S." and thereby subject to Section 404 permitting and state Water Quality Standards. (Goodman Letter)

Recommendations

◆ The EPA should plainly state how this rulemaking will impact storm-water collection systems and clearly exempt those parts of the systems that EPA does not wish to include. (Goodman Letter)

◆ We request that the EPA specifically exclude green infrastructure and outline the Agency's understanding of what is included within green infrastructure similar to what was done for agricultural practices for 'normal farming practices'. (Goodman Letter)

Cost to Local Government

Background

The LGAC heard extensive concerns that the US Army Corps of Engineers simply does not have enough resources to effectuate an efficient permit process now or under a new rule without additional resources. An ineffective permit process consumes scarce local, state and federal personnel and financial resources without achieving a value-added return on investment. The revised rule and the permitting process and implementation must recognize the scarcity of these resources such that results are optimized for the level of investment. (LGAC 2014 Report) Delays and additional permitting do not get calculated into a simplistic understanding of affordability of 2 percent of median household income (MHI), which the Agency utilizes to make determinations on significant cost impacts to local communities (Goodman letter).

Recommendations:

◆ *The LGAC recommends that the EPA continue to coordinate with the US Army Corps of Engineers to ensure that the permit process is predictable and value-added. The proposed rule must be viewed in the context of how it will be implemented to validate that the resource protection outcome is balanced against the economic cost of the permitting process. Local, tribal and state agencies are at the front lines of achieving the goals of the Clean Water Act. Engaging local agencies as collaborative partners in the conversation with EPA and the US Army Corps of Engineers regarding implementation can only improve the process and the desired water resources protection results. (LGAC 2014 Report)*

◆ *The LGAC recommends that EPA better understand the cost and resource implications, especially to local, state and tribal agencies, before drafting the final rule. Local agencies are very concerned about cost, which is exacerbated by the uncertainty in the permitting process. (LGAC 2014 Report)*

EPA'S LOCAL GOVERNMENT ADVISORY COMMITTEE (LGAC)

Thursday, June 29 2017
2:00 p.m.-3:00 p.m. (ET) WJC North 3528

Meeting Agenda

2:00 pm-2:05 pm

Call to Order/Introductions

Chairman, Mayor Bob Dixon
Vice-Chairwoman, Councilor Jill Duson

2:05pm- 2:15pm

EPA Remarks

Troy Lyons, Associate Administrator
Office of Congressional and Intergovernmental Relations,
Intergovernmental Relations

Layne Bangerter
Deputy Associate Administrator for Intergovernmental
Relations

Tate Bennett, Advisor to the Administrator,
Intergovernmental Relations

2:15pm-2:30pm

Public Comments

2:30pm-2:55 pm

Workgroup Actions-Report-Out

Small Community Advisory Subcommittee (SCAS)

Commissioner Robert Cope, Chair
Mayor Johnny Dupree, Vice-Chair

ACTION: Report Out

Protecting America's Waters Workgroup

Susan Hann, Chairwoman
Mayor Elizabeth Kautz, Vice-Chair

ACTION: Discussion and Vote on
Waters of the United States Charge

EPA'S LOCAL GOVERNMENT ADVISORY COMMITTEE (LGAC)

Air, Climate and Energy Workgroup

Commissioner Robert Cope, Acting Chair

ACTION: Report Out

Environmental Justice (EJ) Workgroup

Dr. Hector Gonzalez, Chair

ACTION: Report Out

Cleaning Up Our Communities Workgroup

Councilor Jill Duson, Chairwoman

Mayor Karen Freeman-Wilson, Vice-Chairwoman

ACTION: Report Out

2:55pm-3:00 pm

LGAC Concluding Remarks

Mayor Bob Dixon, Chair of LGAC

Robin Richardson

Principal Deputy Associate Administrator

3:00pm

Adjournment

Mayor Bob Dixon, Chair of LGAC

➤ **Water: Our Nation's Health and Wealth**

Water resources are the lifeblood for our nation's cities, towns and small rural communities. It is essential for the health, prosperity and security for our citizens and is among the top priorities for us in local governments. As State, local and tribal government partners we desire to manage our water resources so that we have reliable and safe water supplies to create jobs, attract industry and investment, and provide for the health and welfare of citizens. A common understanding of the value of water and how it impacts the health and prosperity of us at the local level is important for governmental decision-making. For example, water infrastructure costs are estimated to be \$100 per household per year, for smaller communities, these same costs are \$400 to \$800 more per year.¹ Estimates range for every \$1 million investment in water infrastructure it supports between 15 and 18 jobs throughout the economy. Disruption in our nation's water supply, would greatly impact our economy on a large scale.² For example, one day's disruption for the service industry would result in a 70% reduction in sales. For the petroleum industry (highest), the loss would be \$5,800 per employee (7 days the equivalent of 1% of annual income). Therefore, protections under the Clean Water Act for the 117 million people (one third of Americans) that rely on these waters as part of our public drinking water assets are decisions of public trust and stewardship. Balancing the CWA authorities to protect rivers, lakes, streams and wetlands and to keep them healthy and safe is the responsibility of all levels of government. At the same time costs of treatment should not be transferred directly to the rate payer - *at the tap*.

➤ **Local Governments and Cooperative Federalism**

The Clean Water Act (CWA) as amended in 1972, established the basic structure for protecting our nation's water resources by regulating pollutant discharges into the waters of the United States. Clean Water Act programs are largely federal, state and tribal programs. The CWA Section 404 is an EPA and Corps of Engineer (joint program) which regulates discharges of dredged or fill materials into Waters of the United States, including wetlands. On February 28, 2017, the President of the United States issued an Executive Order directing EPA and Department of the Army to review and rescind or revise the 2015 Rule. The EPA and the Army Corps of Engineers are in the process of considering a revised definition of "Waters of the United States" consistent with the Executive Order. Local governments support a straight-forward rulemaking process, inclusive of the tenants of cooperative federalism. This approach acknowledges the shared responsibility of state and local governments in the governance and cooperation to work out details of responsibility. CWA Section 404 is largely federal with the exception of a small number of State Assumed 404 Programs (Michigan and New Jersey). If empowered, states and tribes could play an increased and more efficient role in managing the program. Local governments too, have a strong role to play and can be key strategic partners in

¹ <http://www.nerwa.org/gwnews/db212.pdf>, The Value of Water and the Water Operator, by Doug Buresh, Circuit Rider #3

²

[http://thevalueofwater.org/sites/default/files/Economic%20Impact%20of%20Investing%20in%20Water%20Infrastru](http://thevalueofwater.org/sites/default/files/Economic%20Impact%20of%20Investing%20in%20Water%20Infrastru%20ructure_VOW_FINAL_pages.pdf)
[ructure VOW FINAL pages.pdf](http://thevalueofwater.org/sites/default/files/Economic%20Impact%20of%20Investing%20in%20Water%20Infrastru)-The Value of Water

protecting our nation's water resources. Local governments manage broader water quality protection efforts such as managing stormwater, flood protection and enhanced watershed protection along with protecting the sources of drinking water. Local governments have the tools to strengthen wetland and stream protection efforts that better support community goals with greater protection for the resource. Integrated Planning (IP) offers municipalities the opportunity to meet multiple Clean Water Act requirements by sequencing separate wastewater and stormwater programs while maximizing investments so that the highest priority projects come first. EPA, states, and municipalities have achieved progress in implementing IP approaches while addressing the most serious water quality issues in order of priority to protect public health and the environment.

➤ **Clarity and Predictability**

A central theme heard by the LGAC in public meetings of state, local and tribal government officials on the 2015 'Waters of the U.S.' rule is that definitions were too broad or confusing and were subject to interpretation through litigation. Key terms used in the WOTUS rule are vague such as "uplands," "tributary," "floodplain," "significant nexus," "adjacent," and "neighboring" but are also important in defining what waters are jurisdictional. These terms are either broadly defined, or not defined at all which has led to further confusion, not less, over what waters fall within federal jurisdiction. Local governments need a rule that puts forward clear definitions and provides examples and graphics for further clarity. Without this clarity, it could lead to further unpredictability and result in unnecessary project delays, subjective judgements and inconsistency across the country.

➤ **Flexibility and Regionalization**

In formulating a revised 'Waters of the U.S.' rule it should have flexibility and reflect natural and regional variability of our nation's waters. As a basic approach, criteria could be established that recognizes natural ecoregions (delineated on the basis of natural and anthropogenic factors) to recognize geographic variability among regions. States and tribes should have further input in this process to modify or improve on this basic approach. Workgroups made up of federal, state and local officials could help establish local delineation factors characteristic of these regional waterbodies such as western ephemeral streams, and other unique wetlands such as pocosins, Carolina bays etc. should be factored. Western arid streams may need further regional determinations as whether these areas are washes and otherwise dry channels characterized by irregular (not seasonal) ephemeral flows or may actually qualify as waters of the United States. These jurisdictional calls of WOTUS should be the exception rather than the rule. Also, wetlands and streams in the State of Florida also should be considered in separate regional guidance since most of the State could be classified as a Waters of the U.S. due to high groundwater tables and surface connections with waters of the U.S.

➤ **Enhanced State and Local Government Role**

States play a vital role in the protection of wetlands by addressing waters and activities that *are not* regulated under the Section 404 program, or by imposing additional limits on activities that *are* regulated under that program. Pursuant to Section 404(g) of the Clean

Water Act, a state can *assume* the authority to issue permits for the discharge of dredged or fill material into waters regulated under the Clean Water Act other than traditional navigable waters or waters seaward of the high water mark (33 U.S.C. § 1344(g)). EPA's regulations also authorize tribes to assume Section 404 permitting authority within their jurisdiction (40 C.F.R. § 233.2). In order to assume Section 404 permitting program, a state must enact laws and regulations to create a program that meets requirements designed to ensure that the state can administer the Section 404 permitting program as the Corps. This process could be streamlined and could be incentivized for state assumption. States can play a greater role in the administration of the federal program and streamline permitting for developers in the state through a State Programmatic General Permit. CWA Section 404(e) authorizes the Corps of Engineers to issue general permits "on a state, regional or nationwide basis for any category of activities involving discharges of dredged or fill material" if there are only minimal adverse environmental effects. Local regulation of wetlands in addition to the state and federal programs have many benefits as well. Local decision makers have numerous land use tools available that can be more effective, and with less cost, protect sensitive landscapes valuable to their community such as with building permits, zoning authority, sanitary and health codes, and soil erosion control.

➤ **Modified Scalia Approach**

The Scalia opinion applies a narrow interpretation to CWA jurisdiction, extending the agencies' regulatory authority only to "relatively permanent, standing or continuously flowing bodies of water" connected to traditional navigable waters, and to "wetlands with a continuous surface connection to" such relatively permanent waters. Local governments in general support a narrow interpretation and put forward that the criteria in the 2008³ guidance has clear criteria for categorical jurisdiction of 'yes', 'no' or 'maybe' which might be considered as a modified Scalia approach. Local governments are also concerned about the assurances that water resources which provide (or potentially provide) our communities' drinking water and source water are regulated and protected. These significant waterbodies form the assets of our water infrastructure and these areas may or may not fall within the Scalia interpretation as "connected to a federal navigable waterway." Local governments would potentially support States and Tribes assisting to identify these significant waterbodies by delineating and mapping these significant 'Waters of the State'. These areas once identified should have primacy in decision-making.

➤ **Exemptions**

Exemptions for stormwater and green infrastructure are important for local government. Local governments would be supportive of a revised rule that would retain codification of the waste treatment exemption. It should also extend to MS4s, stormwater ponds, settling basins recycled

³ <https://www.epa.gov/cwa-404/2008-raphanos-guidance-and-related-documents>

water facilities which depend upon artificially created wetlands and storage ponds to treat millions of gallons of water a day. There has also been a major concern of county governments that roadside ditches are exempt. The revised rule should affirm also that reservoirs along with influent and treated effluent storage ponds are within the scope of the waste treatment exemption, consistent with the regulatory definition of "complete waste treatment system" found in existing federal regulations including features such as storage ponds, basins, artificially created wetlands, recycled water reservoirs and other features associated with water recycling.⁴

➤ **Permitting Reform**

The permitting system is complex and outdated. Agencies' budgets and staffing are overwhelmed and lack resources to respond to individual permits. At the same time, the private sector confronts time-consuming requirements that pose significant delays and economic burdens. Permitting can be made more efficient and more effective. For example, permitting length of time can be done more efficiently (less than 60 days) and it can also be more flexible, decentralized and integrated with community goals. Local governments would be generally in favor of State Assumption of the 404 program and other innovations to streamline the permitting process. Also, further consideration of General Permits and mapping would aid in permitting reform.

➤ **Agriculture, Rural Communities and Waters of the U.S.**

Agriculture and rural communities have expressed concerns about the Waters of the U.S. Most of the concern of the rule has been whether it would modify existing statutory provisions that exempt "normal farming and ranching" practices from dredge and fill permitting or others that exclude certain agricultural discharges, such as irrigation return flow and stormwater runoff, from all CWA permitting. The other key area of concern was the confusion whether or not ditches were exempt. Normal agricultural and silvicultural practices are exempt but the interpretive rule issued (but then withdrawn) to clarify the 56 practices that are exempt from CWA Section 404 permitting was very confusing to farmers. Other issues for rural communities is the NPDES permits for application of pesticides and herbicides in WOTUS. Also, there is a concern that 'prior converted croplands' which are exempt if they are certified by NRCS are also exempt from wetland regulations administered by the Army Corps of Engineers and EPA (Section 404 of the Clean Water Act). However, if the land changes to a non-agricultural use, or is abandoned, according to the criteria established by the Corps and EPA, it may be regulated under the CWA. These issues combined with the complexity of the WOTUS and the role of the NRCS poses significant issues for the agricultural sector and rural communities.

➤ **Outreach to Local Governments**

There is a need for enhanced outreach to local governments. Its significance in WOTUS decision-

⁴ 1 See 40 C.F.R. §35.2005(b)(12), defining "complete waste treatment system" as "all the treatment works necessary to meet the requirements of title III of the [CWA], involving . . . the ultimate disposal, including recycling or reuse, of the treated wastewater and residues which result from the treatment process."

making is all the more critical. A comprehensive communication strategy is needed for local governments that improves the channels of information distribution, and explicit communication at all levels of government. Getting information into the hands of local governments where it will have the most impact must be a priority. This is particularly relevant in small, disadvantaged and ethnically diverse communities. Local governments need to act effectively so that information will reach all relevant parties so it can also be readily communicated effectively to citizens. Therefore, there will be a pressing need to improve governmental communication and transfer of information among the EPA, state, tribal and local governments, and getting that information out to the public. Specific tailored information for local elected officials is also needed to convey the effective changes of the WOTUS rule.

Affordability

One of the common themes heard from local governments revolves around affordability. This issue has several components including the ability of ratepayers to pay the cost of regulatory compliance, pollution and clean-up costs, punitive costs that only serve to reduce local government resources and the disproportionate costs for small and economically disadvantaged communities. If the goal is safe, clean water throughout the country, innovation in approach and cost allocation must be considered at the federal, state, tribal and local levels.

DRAFT

The Definition of “Waters of the U.S.”

E.O. 13132 Federalism Consultation Meeting

Meeting with the ASWM

June 6, 2017

2:00-3:00 pm Eastern

<https://attendee.gotowebinar.com/register/1869645139279370243>

Purpose & Agenda

Purpose:

- Initiate Federalism consultation to obtain state and local government officials' perspectives
- Provide an overview of potential changes under consideration for the definition of "Waters of the U.S."

Agenda:

- Federalism overview
- "Waters of the U.S." over time
- The Executive Order
- Proposed two-step process
 - Step 1
 - Step 2
- Discussion of Potential Approaches
- Next steps

E.O. 13132, Federalism

The Order requires that Federal agencies consult with elected state and local government officials, or their representative national organizations, when developing regulations that have federalism implications.

The agencies are consulting due to strong interest on the part of state and local governments on this issue over the years and potential effects associated with a change in the definition of “waters of the U.S.”

“Waters of the U.S.” Over Time

From the 1970s through the 1990s, the majority of federal courts, as well as the agencies, consistently interpreted a broad scope of Clean Water Act jurisdiction.

Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The justices in the 2006 *Rapanos* decision were split on how this was to be accomplished.

The agencies have been working since these Supreme Court decisions to provide clarification and predictability in the procedures used to identify waters that are – and are not – covered by the Clean Water Act.

The 2015 Clean Water Rule was an effort to provide that needed clarification and predictability. Many stakeholders, including many states, expressed concerns with the 2015 Rule.

The agencies are now embarking on another effort to provide clarity and predictability to members of the public.

The Executive Order

On February 28, 2017, the President signed the “Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”

The E.O. calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule and “publish for notice and comment a proposed rule rescinding or revising the rule....”

The E.O. directs that EPA and the Army “shall consider interpreting the term ‘navigable waters’” in a manner “consistent with Justice Scalia’s opinion” in *Rapanos*. Justice Scalia’s opinion indicates CWA jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

<https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

Two-Step Process

The agencies are implementing the Executive Order in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule.

1. The agencies are taking action to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
2. The agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.

The agencies are aware that the scope of CWA jurisdiction is of intense interest to many stakeholders and therefore want to provide time for appropriate consultation and deliberations on the ultimate regulation.

In the meantime, the agencies will continue to implement regulatory definition in place prior to the 2015 rule, consistent with the 2003 and 2008 guidances, in light of the *SWANCC* and *Rapanos* decisions, pursuant to the Sixth Circuit stay of the Clean Water Rule.

Step 1: Withdraw 2015 Clean Water Rule

While the Sixth Circuit stay may remain in effect for some time, its duration is uncertain.

To provide greater certainty, the agencies will move to reinstate the preexisting regulations and guidance and to withdraw the 2015 Rule.

In the Step 1 proposed rule, the agencies will define “waters of the United States” using the regulatory definition in place before the Clean Water Rule, which the agencies will continue to implement according to longstanding practice, just as they are today.

The Step 1 proposed rule would maintain the approach in place for decades until a revised rule with a new definition can be promulgated.

Step 2: Develop New Rule Consistent with the Executive Order

The E.O. directs the agencies to consider interpreting the term “navigable waters,” as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

Justice Scalia’s opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

The agencies are consulting with state and local government officials as we begin to develop the new definition.

Potential Approaches to “Relatively Permanent” Waters

Perennial plus
streams with
“seasonal” flow

Current practice:
seasonal flow =
about 3 months
(varies
regionally)

Perennial plus
streams with another
measure of flow

Use appropriate,
implementable
metrics, e.g.,
frequency of flow,
intersecting water
table

Perennial streams
only

Streams
that carry flow
throughout the
year except in
extreme drought

Other

Thoughts?

Potential Approaches to Wetlands with a “Continuous Surface Connection”

Surface connection
even through non-
jurisdictional feature

Current practice
considers directly
abutting wetlands
and those with a
continuous surface
connection,
regardless of
distance, to be
jurisdictional

Some degree of
connectivity

Use appropriate,
implementable
metrics, e.g.,
distance

Wetland must
directly touch
jurisdictional waters

Only wetlands that
directly touch a
jurisdictional water

Other

Thoughts?

Discussion:

The change in jurisdictional waters will vary across states and localities and with the options suggested above. Given that:

1. How would you like to see the concepts of “relatively permanent” and “continuous surface connection” defined and implemented? How would you like to see the agencies interpret “consistent with” Scalia? Are there particular features or implications of any such approaches that the agencies should be mindful of in developing the step 2 proposed rule?
2. What opportunities and challenges exist for your state or locality with taking a Scalia approach?
3. Do you anticipate any changes to the scope of your state or local programs (e.g., regulations, statutes or emergency response scope) regarding CWA jurisdiction? In addition, how would a Scalia approach potentially affect the implementation of state programs under the CWA (e.g., 303, 311, 401, 402 and 404)? If so, what types of actions do you anticipate would be needed?
4. The agencies’ economic analysis for step 2 intends to review programs under CWA 303, 311, 401, 402 and 404. Are there any other programs specific to your region, state or locality that could be affected but would not be captured in such an economic analysis?

Next Steps

Do you have any additional information that the EPA should be aware of?

- If so, please provide.

Do you have any other approaches that you would like the agencies to consider?

Comments will be due to the EPA in approximately 5 weeks, June 19, 2017.

Please send written comments to: CWAwotus@epa.gov and copy Hanson.Andrew@epa.gov.

Contacts

Project Lead:

Donna Downing

- (202) 566–2428
- CWAwotus@epa.gov

Federalism Contact:

Andrew Hanson

- (202) 564-3664
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For Additional Information

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implementable
metrics, e.g.,
frequency of flow,
intersecting water
table

Perennial streams
only

Streams
that carry flow
throughout the
year except in
extreme drought

Other

Thoughts?

Potential Approaches to Wetlands with a “Continuous Surface Connection”

Surface connection even through non-jurisdictional feature

Current practice considers directly abutting wetlands and those with a continuous surface connection, regardless of distance, to be jurisdictional

Some degree of connectivity

Use appropriate, implementable metrics, e.g., distance

Wetland must directly touch jurisdictional waters

Only wetlands that directly touch a jurisdictional water

Other

Thoughts?

Discussion:

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Please visit our new website at:

◦ <https://www.epa.gov/wotus-rule>

The Definition of “Waters of the U.S.”

E.O. 13132 Federalism Consultation Meeting

Webinar with NASDA

May 31, 2017

4-5 pm Eastern

Adobe Connect Link: http://epawebconferencing.acms.com/nasda_wotus/

Call in Number: 877-744-6030, Conference ID 30960519

Purpose & Agenda

Purpose:

- Initiate Federalism consultation to obtain state and local government officials' perspectives
- Provide an overview of potential changes under consideration for the definition of "Waters of the U.S."

Agenda:

- Federalism overview
- "Waters of the U.S." over time
- The Executive Order
- Proposed two-step process
 - Step 1
 - Step 2
- Discussion of Potential Approaches
- Next steps

E.O. 13132, Federalism

The Order requires that Federal agencies consult with elected state and local government officials, or their representative national organizations, when developing regulations that have federalism implications.

The agencies are consulting due to strong interest on the part of state and local governments on this issue over the years and potential effects associated with a change in the definition of “waters of the U.S.”

“Waters of the U.S.” Over Time

From the 1970s through the 1990s, the majority of federal courts, as well as the agencies, consistently interpreted a broad scope of Clean Water Act jurisdiction.

Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The justices in the 2006 *Rapanos* decision were split on how this was to be accomplished.

The agencies have been working since these Supreme Court decisions to provide clarification and predictability in the procedures used to identify waters that are – and are not – covered by the Clean Water Act.

The 2015 Clean Water Rule was an effort to provide that needed clarification and predictability. Many stakeholders, including many states, expressed concerns with the 2015 Rule.

The agencies are now embarking on another effort to provide clarity and predictability to members of the public.

The Executive Order

On February 28, 2017, the President signed the “Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”

The E.O. calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule and “publish for notice and comment a proposed rule rescinding or revising the rule....”

The E.O. directs that EPA and the Army “shall consider interpreting the term ‘navigable waters’” in a manner “consistent with Justice Scalia’s opinion” in *Rapanos*. Justice Scalia’s opinion indicates CWA jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

<https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

Two-Step Process

The agencies are implementing the Executive Order in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule.

1. The agencies are taking action to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
2. The agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.

The agencies are aware that the scope of CWA jurisdiction is of intense interest to many stakeholders and therefore want to provide time for appropriate consultation and deliberations on the ultimate regulation.

In the meantime, the agencies will continue to implement regulatory definition in place prior to the 2015 rule, consistent with the 2003 and 2008 guidances, in light of the *SWANCC* and *Rapanos* decisions, pursuant to the Sixth Circuit stay of the Clean Water Rule.

Step 1: Withdraw 2015 Clean Water Rule

While the Sixth Circuit stay may remain in effect for some time, its duration is uncertain.

To provide greater certainty, the agencies will move to reinstate the preexisting regulations and guidance and to withdraw the 2015 Rule.

In the Step 1 proposed rule, the agencies will define “waters of the United States” using the regulatory definition in place before the Clean Water Rule, which the agencies will continue to implement according to longstanding practice, just as they are today.

The Step 1 proposed rule would maintain the approach in place for decades until a revised rule with a new definition can be promulgated.

Step 2: Develop New Rule Consistent with the Executive Order

The E.O. directs the agencies to consider interpreting the term “navigable waters,” as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

Justice Scalia’s opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

The agencies are consulting with state and local government officials as we begin to develop the new definition.

Potential Approaches to “Relatively Permanent” Waters

Perennial plus
streams with
“seasonal” flow

Current practice:
seasonal flow =
about 3 months
(varies
regionally)

Perennial plus
streams with another
measure of flow

Use appropriate,
implementable
metrics, e.g.,
frequency of flow,
intersecting water
table

Perennial streams
only

Streams
that carry flow
throughout the
year except in
extreme drought

Other

Thoughts?

Potential Approaches to Wetlands with a “Continuous Surface Connection”

Surface connection even through non-jurisdictional feature

Current practice considers directly abutting wetlands and those with a continuous surface connection, regardless of distance, to be jurisdictional

Some degree of connectivity

Use appropriate, implementable metrics, e.g., distance

Wetland must directly touch jurisdictional waters

Only wetlands that directly touch a jurisdictional water

Other

Thoughts?

Discussion:

The change in jurisdictional waters will vary across states and localities and with the options suggested above. Given that:

1. How would you like to see the concepts of “relatively permanent” and “continuous surface connection” defined and implemented? How would you like to see the agencies interpret “consistent with” Scalia? Are there particular features or implications of any such approaches that the agencies should be mindful of in developing the step 2 proposed rule?
2. What opportunities and challenges exist for your state or locality with taking a Scalia approach?
3. Do you anticipate any changes to the scope of your state or local programs (e.g., regulations, statutes or emergency response scope) regarding CWA jurisdiction? In addition, how would a Scalia approach potentially affect the implementation of state programs under the CWA (e.g., 303, 311, 401, 402 and 404)? If so, what types of actions do you anticipate would be needed?
4. The agencies’ economic analysis for step 2 intends to review programs under CWA 303, 311, 401, 402 and 404. Are there any other programs specific to your region, state or locality that could be affected but would not be captured in such an economic analysis?

Next Steps

Do you have any additional information that the EPA should be aware of?

- If so, please provide.

Do you have any other approaches that you would like the agencies to consider?

Comments will be due to the EPA by June 19, 2017.

Please send written comments to: CWAwotus@epa.gov and copy Hanson.Andrew@epa.gov.

Contacts

Project Lead:

Donna Downing

- (202) 566–2428
- CWAwotus@epa.gov

Federalism Contact:

Andrew Hanson

- (202) 564-3664
- Hanson.Andrew@epa.gov

NASDA EPA Contact:

- 202-564-4714
- Nitsch.Chad@epa.gov

For Additional Information

Please visit our new website at:

◦ <https://www.epa.gov/wotus-rule>

Dear Colleague:

I am writing you to invite you to engage with the Environmental Protection Agency, the Department of Army, and the Army Corps of Engineers on the Clean Water Act “Waters of the U.S.” rulemaking.

The February 28th Executive Order on “Restoring the Rule of Law, Federalism, and Economic Growth by reviewing the ‘Waters of the United States’ Rule” directs the EPA and the Department of the Army to review the final Clean Water Rule published in 2015 and publish for notice and comment a proposed rule rescinding or revising the rule. To meet the objectives of the EO in a clear and expeditious approach, the agencies have decided on a two-step approach: 1) an initial rulemaking to rescind the 2015 rule and re-codify the regulatory approach that has been in place for decades, and thus maintains the status quo; and 2) a rulemaking to revise the definition of “waters of the U.S.” consistent with direction in the February 28, 2017 E.O.

EPA initiated federalism consultation on April 19 and tribal consultation on April 20, regarding the new definition that will be developed under the second rulemaking. These consultation periods end June 19 and 20, respectively.

While the agencies are reviewing these formal comments, we would also like to hear from your organizations. We are planning a listening session for the National Association of State Departments of Agriculture on May 31, 2017, from 4:00 pm to 5:00 pm Eastern. This will be a webinar http://epawebconferencing.acms.com/nasda_wotus/ call in 877-744-6030, Conference ID 30960519. Please let us know if you will be able to attend the webinar by contacting Kathy Hurl in EPA’s Office of Wetlands, Oceans, and Watersheds at hurl.kathy@epa.gov or 202-566-1269. I have attached a PPT that we will use during this meeting that provides a discussion of potential options for the revised definition as well as areas for which we are seeking early input.

Although any discussions and written materials would be summarized for the proposed rulemaking docket, we anticipate that individual states will submit their own written comments as part of the federalism consultation.

This will not be your only opportunity to engage with the agencies. You will also have an opportunity to provide comments on the proposed step 2 rule during the formal notice and comment process.
Sincerely,

/S/

Mindy Eisenberg, Acting Director
Oceans, Wetlands and Communities Division
USEPA

From: Hanson, Andrew
Location: ,EPA, WJ Clinton EAST Building, Room 3233
Importance: Normal
Subject: FW: Federalism Briefing: Waters of the U.S.
Start Date/Time: Wed 4/19/2017 6:00:00 PM
End Date/Time: Wed 4/19/2017 8:00:00 PM
FedWOTUS2.pdf

Hi – Here is the invite and the letter.

-----Original Appointment-----

From: Hanson, Andrew
Sent: Monday, April 10, 2017 12:02 PM
To: Hanson, Andrew; Alexandra Dunn; Carolyn Hanson; akarellas@csg.org; Jeffrey Stockdale; Judy Sheahan; Carolyn Berndt; Julie Ufner; ben.husch@ncsl.org; kristen.hildreth@ncsl.org; aschaefer@nga.org; JACK PETERSON; 'Michael Griffin'; jimo@tfgnet.com; asnowden@icma.org; jfranzel@icma.org; akrantz@nacwa.org; ngardner-andrews@nacwa.org; janastasio@acwa-us.org; Sean Rolland; Gerry Baker; nathan@nasda.org; jeanne.christie@aswm.org; peg.bostwick@aswm.org; Bangerter, Layne; Bowles, Jack; Richardson, RobinH; Wagner, Kenneth; seggleston@aashto.org; barb@nasda.org; Matthews, Demond; Hannon, Arnita; Threet, Derek; Burden, Susan; hpropst@westgov.org; twillardson@wswc.utah.gov
Cc: Soronen, Lisa; Hope, Brian; Gaines, Cynthia; ttimons@westgov.org; Kent, Alison; Dickerson, Tom; Osinski, Michael; Barbary, Andrea; Nitsch, Chad; Kaiser, Sven-Erik; Borum, Denis
Subject: Fwd: Federalism Briefing: Waters of the U.S.
When: Wednesday, April 19, 2017 2:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: ,EPA, WJ Clinton EAST Building, Room 3233

FYI

Sent from my iPhone

Begin forwarded message:

From: "Hanson, Andrew" <Hanson.Andrew@epa.gov>
To: "Alexandra Dunn" <adunn@ecos.org>, "Carolyn Hanson" <chanson@ecos.org>, "akarellas@csg.org" <akarellas@csg.org>, "Jeffrey Stockdale" <jstockdale@csg.org>, "Judy Sheahan" <jsheahan@usmayors.org>, "Carolyn Berndt" <Berndt@nlc.org>, "Hanson, Andrew" <Hanson.Andrew@epa.gov>, "Julie Ufner" <JUfner@naco.org>, "ben.husch@ncsl.org" <ben.husch@ncsl.org>, "kristen.hildreth@ncsl.org" <kristen.hildreth@ncsl.org>, "aschaefer@nga.org" <aschaefer@nga.org>, "JACK PETERSON" <peterston6964@msn.com>, "Michael Griffin"

<MGriffin@countyexecutives.org>, "jimo@tfgnet.com" <jimo@tfgnet.com>, "asnowden@icma.org" <asnowden@icma.org>, "jfranzel@icma.org" <jfranzel@icma.org>, "akrantz@nacwa.org" <akrantz@nacwa.org>, "ngardner-andrews@nacwa.org" <ngardner-andrews@nacwa.org>, "janastasio@acwa-us.org" <janastasio@acwa-us.org>, "Sean Rolland" <scrolland@acwa-us.org>, "Gerry Baker" <gerry.baker@iogcc.state.ok.us>, "nathan@nasda.org" <nathan@nasda.org>, "jeanne.christie@aswm.org" <jeanne.christie@aswm.org>, "peg.bostwick@aswm.org" <peg.bostwick@aswm.org>, "Bangerter, Layne" <bangerter.layne@epa.gov>, "Bowles, Jack" <Bowles.Jack@epa.gov>, "Richardson, RobinH" <Richardson.RobinH@epa.gov>, "Wagner, Kenneth" <wagner.kenneth@epa.gov>, "seggleston@aashto.org" <seggleston@aashto.org>, "barb@nasda.org" <barb@nasda.org>, "Matthews, Demond" <matthews.demond@epa.gov>, "Hannon, Arnita" <Hannon.Arnita@epa.gov>, "Threet, Derek" <Threet.Derek@epa.gov>, "Burden, Susan" <Burden.Susan@epa.gov>

Subject: Federalism Briefing: Waters of the U.S.

WHAT: Federalism Briefing – Waters of the United States

WHEN: Wednesday, April 19, 2017, 2:00 – 4:00 p.m.

WHERE: EPA Headquarters, WJ Clinton EAST Building, Room 3233

**Please read the attached letter, RSVP, and plan to use the entrance at 1201 Constitution Ave, NW.

Early arrival (approx. 1:45 p.m.) will facilitate security screening and would be appreciated.
See you on the 19th!



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

April 10, 2017

THE ADMINISTRATOR

Dear Intergovernmental Association Colleague:

I am writing to solicit your input and wisdom on a forthcoming proposal to rescind and revise the definition of waters of the United States (Clean Water Rule: Definition of "Waters of the United States"; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)).

This action follows the February 28, 2017, Presidential Executive Order on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." The order states that it is in the national interest to ensure that the nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty and showing due regard for the roles of Congress and the States under the Constitution. It also directs the U.S. Environmental Protection Agency and the Department of the Army to review the existing Clean Water Rule for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with the law. Further, the order directs the agencies to consider interpreting the term "navigable waters," as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

Consulting with state and local government officials, or their representative national organizations, is a priority to both myself and President Trump. We believe this is an important step in the process prior to proposing regulations that may have implications on federalism as defined by the EPA's policy for implementing the order.

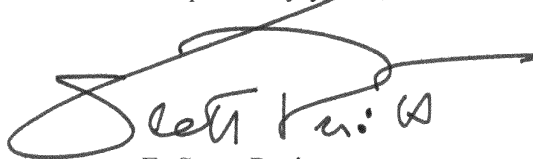
We greatly look forward to the opportunity to sit at the table with our state and local partners from across the country to discuss the rule and develop an approach to address this significant issue while keeping the States at the forefront of our mission.

The agencies intend to follow an expeditious, two-step process that will provide certainty across the country: 1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the 6th Circuit stay of that rule, has been the law in place since 1986, and thus maintains the status quo, and 2) promulgation of a revised definition of waters of the U.S. consistent with direction in the February 28, 2017, E.O. At the upcoming meeting, the EPA will provide brief background information on our process, and you will have the opportunity to provide input, particularly with regard to the charge in the E.O. You and your organizations' members are vital to this process and may also provide written comments after the meeting. I am hopeful you will be able to attend this important discussion and look forward to hearing your thoughts.

The meeting will be on April 19, 2017, from 2:00 – 4:00 pm EDT in Room 3233 of the William Jefferson Clinton East Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. The entrance to the Clinton East (formerly EPA East) building is near the intersection of 12th and Constitution.

Please let us know if you will be able to attend by contacting Andrew Hanson in the EPA's Office of Congressional and Intergovernmental Relations at hanson.andrew@epa.gov or (202) 564-3664. If you have questions regarding the rule, you may contact Donna Downing of the Office of Wetlands, Oceans and Watersheds at downing.donna@epa.gov or (202) 566-1367.

Respectfully yours,

A handwritten signature in black ink, appearing to read "E. Scott Pruitt", with a large, stylized flourish extending from the end of the signature.

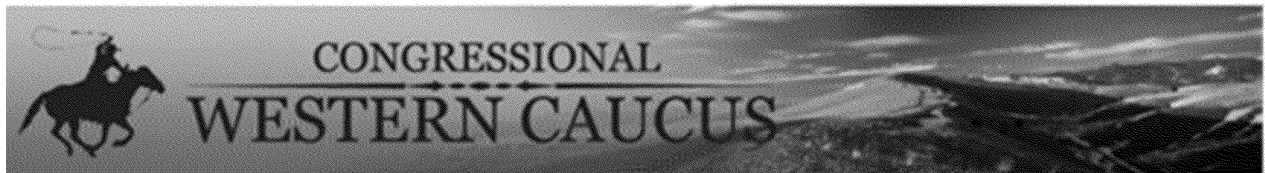
E. Scott Pruitt

cc: Douglas Lamont, Senior Official
Performing the Duties of the Assistant
Secretary of the Army for Civil Works

To: Hupp, Millan[hupp.millan@epa.gov]
Sent: Tue 5/2/2017 4:46:32 PM
Subject: FW: What Western Caucus Members Need to Know About the FY 2017 Omnibus Bill
[What Western Caucus Members Need to Know FY17 Omni.pdf](#)

Do

From: Small, Jeff [mailto:Jeff.Small@mail.house.gov]
Sent: Tuesday, May 2, 2017 10:41 AM
To: Small, Jeff <Jeff.Small@mail.house.gov>
Cc: Roberson, Kelly <Kelly.Roberson@mail.house.gov>
Subject: What Western Caucus Members Need to Know About the FY 2017 Omnibus Bill



What Western Caucus Members Need to Know About the FY 2017 Omnibus Bill

On May 1, 2017, the House Committee on Rules posted the text of [H.R. 244 Senate Amendments to HIRE Vets Act \[Consolidated Appropriations Act, 2017\]](#). This vehicle includes appropriations to fund the government through the end of fiscal year (FY) 2017 which ends on September 30, 2017. The 1,665 page bill includes \$1.163 trillion in discretionary funding for 11 annual appropriations bills, provides additional resources for the Military Construction and Veterans Affairs Act, extends health benefits for Appalachian coal miners in perpetuity, and allocates additional funding for Puerto Rico's Medicaid program. This legislation funds Overseas Contingency Operations at \$93.5 billion. The bill provides \$8.2 billion for emergency and disaster funding. The legislation allocates \$32.28 billion, \$121 million above the FY16 enacted level, to DOI, EPA, USFS, the Indian Health Service and other agency programs. The bill includes \$37.8 billion, \$586 million above the FY16 enacted level, for nuclear weapon defense activities, the Army Corps of Engineers, BOR, DOE and other agency programs. This legislation provides \$153.4 billion, \$12.8 billion below the FY16 enacted level, for agriculture, nutrition, programs that support rural communities and other agency programs.

Votes on this legislation are expected to occur on Wednesday, May 3.

➤ **Wildfire Fighting and Timber**

- Provides \$4.2 billion for wildfire fighting and prevention programs
- Fully funds wildland fire suppression operations at the 10-year average level
- Includes \$570 million for hazardous fuels reduction programs, 25 million above the FY16 enacted level
- Provides \$407 million in emergency funding for the FLAME wildland fire suppression reserve account to help avoid fire borrowing
- Includes \$368 million for USFS timber program, \$8 million above the FY16 enacted level
- Includes rider to treat burning biomass as carbon neutral

➤ **Payments in Lieu of Taxes (PILT)**

- Provides \$465 million in order to provide full-funding for the PILT program

➤ **Sage Grouse**

- Includes rider to prohibit funds to list the greater sage-grouse under the Endangered Species Act and allows for future executive action
- Provides \$69.9 million for on-the-ground conservation activities, an increase of \$8.9 million and directs funding be used for on-the-ground conservation activities

➤ **Environmental Protection Agency**

- Decreases overall funding by \$81.4 million below the FY16 enacted level
- Rejects Obama staffing increases and freezes agency positions at 15,000, the lowest level since 1989
- Supports Trump E.O. to rewrite the Clean Power Plan
- Directs the EPA to commission a report on administrative options for providing states regulatory relief from the Obama Administration's Ozone Rule
- Provides \$4 million for long-term water quality monitoring as a result of the Animas River Spill
- Encourages the EPA to work with states, small businesses and other stakeholders as the agency reevaluates the Obama Administration's RMP rule

➤ **Clean Water Act, U.S. Army Corps of Engineers and the Bureau of Reclamation**

- Prohibits regulation of ditches and farm ponds
- Supports Trump E.O. to rewrite WOTUS
- Includes \$6.04 billion, \$49 million above the FY16 enacted level, for the Corps
- Provides 1.31 billion for BOR, a \$41.5 million increase
- Includes \$67 million to increase water storage

➤ **Oil and Gas Development**

- Blocks an Obama Administration proposal to impose \$48 million in new fees on onshore oil and gas producers
- Provides an additional \$5 million to expedite domestic onshore and offshore energy and minerals development
- Supports a review of Obama methane rules and other regulations that aimed to stifle oil and gas production
- Directs the EPA to improve permitting times for oil and gas applications
- Urges rejection of the Obama Administration's USFWS oil and gas rule

➤ **Mining**

- Includes rider to prohibit new definitions for “fill material” and “discharge of fill material”
- Includes \$105 million for pilot program to reclaim abandoned mine lands
- Provides \$68 million for state regulatory grants
- Requires report on permitting backlog for mining operations

➤ **Land and Water Conservation Fund (LWCF)**

- Funds LWCF at \$400 million, \$50 million below the FY16 enacted level

➤ **Federal Land Acquisition and Public Access**

- Includes \$178 million for new land acquisition for BLM, USFS, NPS and USFWS
- Directs DOI and USFS to notify Congress prior to closing an area to recreational shooting, hunting, or fishing for more than 30 days
- Prohibits DOI from unilaterally creating new wilderness areas

➤ **Grazing**

- Blocks an Obama Administration proposal to impose new grazing fees
- Extends grazing permits for fiscal year 2017
- Extends by three years the requirement that litigants must first exhaust administrative review before litigating grazing issues in Federal court
- Directs the BLM and Forest Service to free up grazing allotments for holders of grazing permits that are unable to use their designated lands due to drought or wildfire spending

-

➤ **Agriculture and Nutrition**

- Prevents implementation of the Obama Administration's school lunch standards
- Includes a \$1.624 billion for Farm Service Agency, a \$29 million increase
- Provides \$949.4 million for the Animal and Plant Health Inspection Service, a \$51.8 million increase
- Provides \$1.03 billion for the Food Safety and Inspection Service, a \$17.2 million increase
- Allocates \$1.87 billion for International food assistance programs, a \$4.42 million increase
- Includes \$1.27 billion for the Agriculture Research Service, a \$86.1 million decrease
- Provides \$8.2 billion for Rural Utilities Service (RUS) loans
- Includes \$2.94 billion for Rural development programs, a \$166.2 million increase
- Allocates \$22.8 billion for child nutrition programs (mandatory spending)

- Includes \$78.5 billion for SNAP food stamps (mandatory spending)

-

➤ **Indian Country**

- Establishes an Indian energy office to expedite permitting on reservations
- Provides \$891.5 million for K-12 education, a \$39.1 million increase
- Allocates \$232 million above the FY16 enacted level for Indian healthcare

➤ **Fish and Wildlife**

- Includes a \$3 million increase to reduce the fish hatchery deferred maintenance backlog and also prohibits hatchery closures
- Caps funding for listing and critical habitat designations under ESA
- Directs USFWS not to enter into settlement agreements unless States and local governments are parties to such agreements
- Requires USFWS to report annually on use of funds for listings versus delistings
- Directs USFWS to complete, report and act on all 5-year status reviews prior to initiating new status reviews

-

➤ **Department of Energy**

- Funds the Office of Science at \$5.39 billion, a \$41.8 million increase
- Includes \$2.1 billion for DOE's Office of Energy Efficiency and Renewable Energy, \$17.2 million more than the FY16 enacted level
- Provides \$306 million for Advanced Research Projects Agency-Energy (ARPA-E), a program the Trump Administration has proposed to eliminate
- Includes \$19.7 billion for atomic energy defense activities, a \$1.1 billion increase
- Provides \$880 million for nuclear energy, a \$20 million increase
- Includes \$660 million for fossil energy R&D, a \$36 million increase

- Provides \$5.68 billion, a \$90 million decrease for the National Oceanic and Atmospheric Administration

- Funds NOAA's Ocean and Atmospheric Research program at \$477.7 million and funds climate research at \$158 million

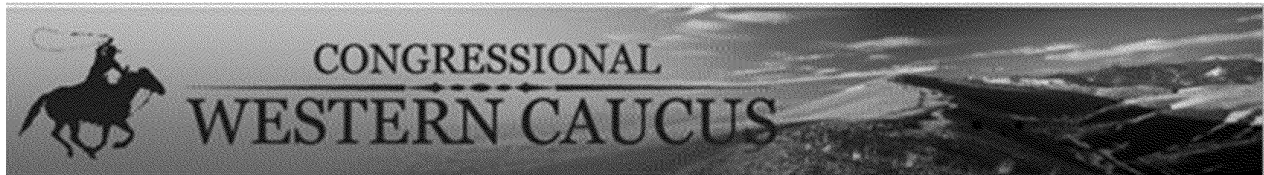
➤ **Removes several riders that passed the House including:**

- A rider to prevent funds to finalize the Obama Administration's CERCLA rule
- A rider to prevent funds for future designations under the Antiquities Act in counties with significant opposition
- A rider to prevent funds for the Obama Administration's ONRR valuation rule
- A rider to prevent funds for the EPA to expand the Clean Water Act through unlawful guidance
- A rider to prevent funds for the Obama Administration's Well Control rule
- A rider to prevent funds for the Obama Administration's WOTUS rule
- A rider to prevent funds for the Obama Administration's new methane emissions rules
- A rider to prevent funds for the Obama Administration's Clean Power Plan rules
- A rider to prevent funds for listing the lesser prairie chicken
- A rider to prevent funds for national heritage areas in certain counties in Colorado
- A rider to prevent the removal of any Federally-owned or operated dams
- A rider to prevent funds for purchasing heavy water from Iran

➤ **Other**

- Makes Litigation Costs Transparent
 - Directs DOI, EPA, and USFS to provide Congress with detailed Equal Access to Justice Act (EAJA) fee information
- Directs DOI to work with Congress, tribes, and local stakeholders before making new national monument designations under the Antiquities Act

- Includes \$56 million for the NPS maintenance backlog
- Encourages DOI, USFS, and EPA to disclose costs associated with analyses required under NEPA
- Permanently provides \$4.6 billion for health benefit plans for Appalachian coal miners who are members of the United Mine Workers of America
- Includes \$295 million in additional funding for Puerto Rico's Medicaid program
- Provides a \$15 billion increase for defense spending
- Includes an additional \$1.5 billion for border and other security
- Prohibits funding for the Green Climate Fund, the UN Intergovernmental Panel on Climate Change and other Paris Climate Agreement entities
- Continues a prohibition on the regulation of the lead content of ammunition and fishing tackle
- Calls for a report on a plan to achieve long-term sustainable wild horse and burro populations on the range in a humane manner
- Does not provide any funding for the Secure Rural Schools (SRS) Program
- Encourages USFWS to reissue a rule to delist the gray wolves in the Great Lakes region upon a favorable court ruling
- Does not include any riders to block the Obama Administration's Onshore Orders
- Requires report on appropriations for climate change programs in FY16 and FY17



WHAT WESTERN CAUCUS MEMBERS NEED TO KNOW ABOUT THE FY 2017 OMNIBUS BILL

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- Includes rider to treat burning biomass as carbon neutral

➤ Payments in Lieu of Taxes (PILT)

- Provides \$465 million in order to provide full-funding for the PILT program

➤ Sage Grouse

- Includes rider to prohibit funds to list the greater sage-grouse under the Endangered Species Act and allows for future executive action
- Provides \$69.9 million for on-the-ground conservation activities, an increase of \$8.9 million and directs funding be used for on-the-ground conservation activities

- **Environmental Protection Agency**
 - Decreases overall funding by \$81.4 million below the FY16 enacted level
 - Rejects Obama staffing increases and freezes agency positions at 15,000, the lowest level since 1989
 - Supports Trump E.O. to rewrite the Clean Power Plan
 - Directs the EPA to commission a report on administrative options for providing states regulatory relief from the Obama Administration's Ozone Rule
 - Provides \$4 million for long-term water quality monitoring as a result of the Animas River Spill
 - Encourages the EPA to work with states, small businesses and other stakeholders as the agency reevaluates the Obama Administration's RMP rule
- **Clean Water Act, U.S. Army Corps of Engineers and the Bureau of Reclamation**
 - Prohibits regulation of ditches and farm ponds
 - Supports Trump E.O. to rewrite WOTUS
 - Includes \$6.04 billion, \$49 million above the FY16 enacted level, for the Corps
 - Provides 1.31 billion for BOR, a \$41.5 million increase
 - Includes \$67 million to increase water storage
- **Oil and Gas Development**
 - Blocks an Obama Administration proposal to impose \$48 million in new fees on onshore oil and gas producers
 - Provides an additional \$5 million to expedite domestic onshore and offshore energy and minerals development
 - Supports a review of Obama methane rules and other regulations that aimed to stifle oil and gas production
 - Directs the EPA to improve permitting times for oil and gas applications
 - Urges rejection of the Obama Administration's USFWS oil and gas rule
- **Mining**
 - Includes rider to prohibit new definitions for "fill material" and "discharge of fill material"
 - Includes \$105 million for pilot program to reclaim abandoned mine lands
 - Provides \$68 million for state regulatory grants
 - Requires report on permitting backlog for mining operations
- **Land and Water Conservation Fund (LWCF)**
 - Funds LWCF at \$400 million, \$50 million below the FY16 enacted level
- **Federal Land Acquisition and Public Access**
 - Includes \$178 million for new land acquisition for BLM, USFS, NPS and USFWS
 - Directs DOI and USFS to notify Congress prior to closing an area to recreational shooting, hunting, or fishing for more than 30 days

- Prohibits DOI from unilaterally creating new wilderness areas
- **Grazing**
 - Blocks an Obama Administration proposal to impose new grazing fees
 - Extends grazing permits for fiscal year 2017
 - Extends by three years the requirement that litigants must first exhaust administrative review before litigating grazing issues in Federal court
 - Directs the BLM and Forest Service to free up grazing allotments for holders of grazing permits that are unable to use their designated lands due to drought or wildfire spending
- **Agriculture and Nutrition**
 - Prevents implementation of the Obama Administration's school lunch standards
 - Includes a \$1.624 billion for Farm Service Agency, a \$29 million increase
 - Provides \$949.4 million for the Animal and Plant Health Inspection Service, a \$51.8 million increase
 - Provides \$1.03 billion for the Food Safety and Inspection Service, a \$17.2 million increase
 - Allocates \$1.87 billion for International food assistance programs, a \$4.42 million increase
 - Includes \$1.27 billion for the Agriculture Research Service, a \$86.1 million decrease
 - Provides \$8.2 billion for Rural Utilities Service (RUS) loans
 - Includes \$2.94 billion for Rural development programs, a \$166.2 million increase
 - Allocates \$22.8 billion for child nutrition programs (mandatory spending)
 - Includes \$78.5 billion for SNAP food stamps (mandatory spending)
- **Indian Country**
 - Establishes an Indian energy office to expedite permitting on reservations
 - Provides \$891.5 million for K-12 education, a \$39.1 million increase
 - Allocates \$232 million above the FY16 enacted level for Indian healthcare
- **Fish and Wildlife**
 - Includes a \$3 million increase to reduce the fish hatchery deferred maintenance backlog and also prohibits hatchery closures
 - Caps funding for listing and critical habitat designations under ESA
 - Directs USFWS not to enter into settlement agreements unless States and local governments are parties to such agreements
 - Requires USFWS to report annually on use of funds for listings versus delistings
 - Directs USFWS to complete, report and act on all 5-year status reviews prior to initiating new status reviews
- **Department of Energy**
 - Funds the Office of Science at \$5.39 billion, a \$41.8 million increase
 - Includes \$2.1 billion for DOE's Office of Energy Efficiency and Renewable Energy, \$17.2 million more than the FY16 enacted level

- Provides \$306 million for Advanced Research Projects Agency-Energy (ARPA-E), a program the Trump Administration has proposed to eliminate
- Includes \$19.7 billion for atomic energy defense activities, a \$1.1 billion increase
- Provides \$880 million for nuclear energy, a \$20 million increase
- Includes \$660 million for fossil energy R&D, a \$36 million increase
- Provides \$5.68 billion, a \$90 million decrease for the National Oceanic and Atmospheric Administration
- Funds NOAA's Ocean and Atmospheric Research program at \$477.7 million and funds climate research at \$158 million

➤ **Removes several riders that passed the House including:**

- A rider to prevent funds to finalize the Obama Administration's CERCLA rule
- A rider to prevent funds for future designations under the Antiquities Act in counties with significant opposition
- A rider to prevent funds for the Obama Administration's ONRR valuation rule
- A rider to prevent funds for the EPA to expand the Clean Water Act through unlawful guidance
- A rider to prevent funds for the Obama Administration's Well Control rule
- A rider to prevent funds for the Obama Administration's WOTUS rule
- A rider to prevent funds for the Obama Administration's new methane emissions rules
- A rider to prevent funds for the Obama Administration's Clean Power Plan rules
- A rider to prevent funds for listing the lesser prairie chicken
- A rider to prevent funds for national heritage areas in certain counties in Colorado
- A rider to prevent the removal of any Federally-owned or operated dams
- A rider to prevent funds for purchasing heavy water from Iran

➤ **Other**

- Makes Litigation Costs Transparent
 - Directs DOI, EPA, and USFS to provide Congress with detailed Equal Access to Justice Act (EAJA) fee information
- Directs DOI to work with Congress, tribes, and local stakeholders before making new national monument designations under the Antiquities Act
- Includes \$56 million for the NPS maintenance backlog
- Encourages DOI, USFS, and EPA to disclose costs associated with analyses required under NEPA
- Permanently provides \$4.6 billion for health benefit plans for Appalachian coal miners who are members of the United Mine Workers of America
- Includes \$295 million in additional funding for Puerto Rico's Medicaid program
- Provides a \$15 billion increase for defense spending
- Includes an additional \$1.5 billion for border and other security
- Prohibits funding for the Green Climate Fund, the UN Intergovernmental Panel on Climate Change and other Paris Climate Agreement entities
- Continues a prohibition on the regulation of the lead content of ammunition and fishing tackle

- Calls for a report on a plan to achieve long-term sustainable wild horse and burro populations on the range in a humane manner
- Does not provide any funding for the Secure Rural Schools (SRS) Program
- Encourages USFWS to reissue a rule to delist the gray wolves in the Great Lakes region upon a favorable court ruling
- Does not include any riders to block the Obama Administration's Onshore Orders
- Requires report on appropriations for climate change programs in FY16 and FY17

Sent: Tue 5/30/2017 9:30:27 PM

EPA IN ACTION: ACCOMPLISHMENTS WITH PRUITT'S LEADERSHIP

- ✓• **New Source Performance Standards:** Reviewing the New Source Performance Standards for coal-fired power plants, which prevents companies from building new plants.
- ✓• **CPP:** Reviewing the so-called Clean Power Plan that threatens over 125,000 U.S. jobs.
- ✓• **Ozone Standard:** Requested delay of oral arguments on the ozone standard.
- ✓• **Hard Rock Mining:** EPA extended the comment period on the Hard Rock Mining proposed rule that could cost American businesses \$171 million annually.
- ✓• **Coal Combustion Residuals (CCR Rule):** EPA expects provide draft guidance to the states on the CCR rule at the end of the month and begin acting on state permit applications this year. CCR rule is estimated to cost power plants between \$500 and \$745 million – per year.
- ✓• **Energy Independence EO:** Following the President's Energy Independence Executive Order, Administrator Pruitt signed three notices to review and, if appropriate, to revise or rescind major, economically significant, burdensome rules the last Administration issued.
- ✓• **WOTUS:** EPA is restoring states' important role in the regulation of water by reviewing the "Waters of the U.S." or WOTUS. A rule with a regulatory impact analysis of between \$600 million and \$1.2 billion. He is proposing to withdraw and then rewrite the rule..
- ✓• **Regulatory Reform:** Launched the EPA Regulatory Reform Task Force to undergo extensive reviews of the misaligned regulatory actions from the past administration.
- ✓• **Risk Management Rule (RMP Rule):** EPA delayed the RMP rule to make sure that any additional regulations actually make chemical facilities safer, without duplicating regulations or opening our country up to dangerous national security threats. EPA estimates the RMP rule to cost \$131.8 million annually, or \$1.3 billion over ten years.
- ✓• **Superfund Sites:** We are getting real results at cleaning up Superfund sites, including: East Chicago (IN), West Oakland (CA) and Pompton Lake (NJ). First EPA

Administrator to visit East Chicago site.

- ✓• **Water Infrastructure:** Opened the application process for EPA's WIFIA program; a low-risk loan for businesses that will provide \$1 billion in credit to finance over \$2 billion in water infrastructure investments.
- ✓• **Meetings with National/International Leaders:** EPA Administrator Scott Pruitt has consulted over 25 bipartisan governors, 10 bipartisan members of congress, three foreign leaders, four state agriculture departments, and over a dozen bipartisan organizations.
- ✓• **EPA Originalism:** EPA Administrator Pruitt launched a *Back-to-Basics* agenda, touring a Pennsylvania coal mine, a Missouri power plant, and visiting a contaminated "Superfund" site in E. Chicago, to discuss how EPA is refocusing the agency on its core mission of protecting the environment through sensible regulations developed in cooperation with state, local and tribal partners.
- ✓• **MATS Rule:** Given the broad-reaching economic implications of the Mercury and Air Toxics Rule (MATS rule), we are reviewing the costs of the rule to determine whether it complies with our statutory mandate, abides by sound regulatory principles, and is in line with the pro-jobs, pro-growth directives of this Administration.
- ✓• **Clean Air Act/SSM SIP:** Asked the court to postpone oral arguments over an Obama-era rule making 36 states rework their Clean Air Act compliance plans, or the Start-up, Shutdown and Malfunction (SSM) Emissions requirements set by State Implementation Plans (SIP) issued pursuant to the Clean Air Act and subject to EPA's federal oversight.

EPA ACCOMPLISHMENTS: THE DETAILS

TSCA Reform Implementation: Clearing out the backlog of 'new chemical' pre-manufacture notices (PMNs) that were waiting for EPA approval. Keeps U.S. at the top of chemical innovation

- PMNs awaiting a decision by EPA date back to 2015 – well beyond the basic 90-day review period required by the law.
- The American Chemistry Council (ACC) said they need new chemicals to be approved quickly so they can "offer new product formulations to help U.S. businesses compete and win globally."
- ACC estimates that innovation contributes to 0.19 percentage points to the overall long-term growth rate in real GDP. A one-tenth acceleration in the growth of the

stock of chemistry innovation, could result in real GDP being \$60.6 billion higher in four years, supporting about 250,000 jobs.

NSPS: EPA is reviewing the New Source Performance Standards for Coal-Fired Power Plants.

- Industry and states challenged the legality of NSPS targeting the EPA's assumptions about carbon capture and sequestration (CCS) technology
- Challengers argue that NSPS makes it nearly impossible to build a new coal-fired power plant without CCS technology, restraining the industry from adding jobs and growth.
- The American Iron and Steel Institute (AISI) applauded action to revise burdensome regulations that undermine the competitiveness of U.S. steel manufacturers. AISI said that regulations such as NSPS "disproportionately impact coal-generated electricity have put the affordability and reliability of electricity for steel producers at risk."

EPA is also reviewing the Oil and Gas Methane New Source Performance Standards for new and modified sources. Some argue that this rule is wholly unnecessary due to industry reductions in methane and is duplicative of state regulations.

- A notice of review was signed the same day as the Energy Independence Executive Order.
- As a follow-up, EPA issued a notice of reconsideration of the Rule and a delay of costly compliance deadlines to prevent unnecessary expenditures by the industry as the agency considers the rule.
- According to the American Petroleum Institute, the standards would affect "tens of thousands" of new wells each year, and cost up to \$800 million to comply.

Energy Independence Executive Order. Administrator Pruitt signed three notices to pull back and review major, economically significant, burdensome rules the last Administration issued, including: the Clean Power Plan the greenhouse gas rule for new power plants, and an rule to curb methane emissions from oil and gas producers. The

Administrator also withdrew the proposed federal implementation plan and model trading rule associated with the Clean Power Plan.

- ☐☐☐☐☐☐☐ **Senate Majority Leader Mitch McConnell penned an op-ed in Fox News praising President Trump's energy executive order that will restore sanity after Obama's failed climate policies.** “I commend President Trump for sending this flawed regulatory plan, along with a number of others, back to the drawing board with Tuesday’s Energy Independence Executive Order.”

- ☐☐☐☐☐☐☐ **In New York, the editorial board at the New York Post writes that Trump’s executive order will help restore our constitutional system.** “Trump’s move not only helps the economy and delivers on a promise, it also takes a step toward restoring America’s constitutional system, in which Congress passes laws — not a dictatorial president.”

CPP: An executive order was issued to review the so-called Clean Power Plan and EPA sent letters to governors with additional guidance on implementing CPP: former President Obama's most disingenuous environmental initiative and the key component of his agenda regarding climate change.

- ☐☐☐☐☐☐☐ The CPP cost \$292 billion to our nation's economy over 10 years and double-digit electricity price increase in 40 states, yet will have no impact on climate change.

- ☐☐☐☐☐☐☐ CPP kills over 125,000 American jobs.

- ☐☐☐☐☐☐☐ Using the Obama EPA's own data, CPP results in less than 0.2% reduction in CO2 worldwide and will only prevent sea level rise that is equivalent to the thickness of two sheets of paper.

- ☐☐☐☐☐☐☐ The National Mining Association (NMA) placed 51 op-eds in 17 states, and conducted about 18 radio interviews in support of the Energy Independence Order.

Requested Delay of Oral Arguments on 2015 Ozone Standards: Justice Department attorneys asked the Court of Appeals for the District of Columbia to delay oral arguments scheduled for later this month in a lawsuit challenging the rule while the EPA reviews the regulation.

- ☐☐☐☐☐☐☐ The U.S. Chamber of Commerce says that this rule results in stymied economic development and lost job creation.

- The Chamber says that extending the deadline for implementing the 2015 Ozone Standards would be the most effective way to address implementation problems and would provide immediate relief to businesses, state and localities.

EPA announced the agency's decision to review and reconsider the final rule that amends the effluent limitations guidelines and standards for the steam electric power generating category under the Clean Water Act (ELG Rule).

- EPA estimates the ELG rule costs an estimated \$480 million annually, with an average cost of \$1.2 billion per year during the first five years of compliance.
- This is one of the most consequential rules affecting power plants and risks putting coal companies out of business.
- According to the National Rural Electric Cooperative Association these standards would especially burden small and medium sized power plants, and the cost of compliance has been significantly underestimated.

Mining Financial Assurance Rule: EPA extended the comment period on the Hard Rock Mining proposed rule that costs American businesses \$171 million annually.

- Following dozens of requests, EPA issued a 120-day extension of the comment period related to proposed financial responsibility requirements for the hard rock mining industry.
 - According to the National Association of Manufacturers (NAM), the rule could require billions of dollars of additional financial assurances for miners of things like gold, silver, iron and copper—critical materials for countless manufactured products. They say this represents billions of dollars that cannot be used for R&D or for economic growth and new jobs.
 - Three House committee chairs sent a letter requesting the extended comment period to provide more time to digest the rule given that it contains more than 2,300 technical documents and, the chairs argued, was crafted with no input from states, industry experts or stakeholders.

CCR (*Coal Combustion Residuals*): EPA expects to issue the draft guidance to the states at the end of the month and begin acting on state permit applications this year.

- EPA estimates the cost of the CCR rule to be between \$500 and \$745 million annually.

- Leading Senators on the Environment and Public Works Committee have applauded states having their own permitting programs for recycling and reusing coal ash. This provides “needed certainty to industry and businesses, while ensuring the health and safety of families and communities,” according to Senator Shelley Moore Capito R-W.Va.

EPA rescinded a premature evaluation of greenhouse gas and fuel economy standards for model year 2022-2025 vehicles, and is working with DOT to conduct a collaborative and robust review of the standards.

- These standards are costly for automakers and the American people. This thorough review will help ensure that this national program is good for consumers and good for the environment.

- U.S. Rep Joe Barton (R-Texas) said, “You can make a good intellectual case to repeal CAFE and let the market handle it. If Mr. Trump is president...we’ll be back.” And Committee Chairman Fred Upton, R-Mich., said “If done wrong,” the 2025 standards will hurt consumers and carmakers “big time.”

- According to the Auto Alliance, “no agency has ever set emission limits so far into the future,” and this puts 1.1 million jobs at risk and cost the industry \$200 billion by 2025 to comply.

EPA is restoring states’ important role in the regulation of water by reviewing, and if appropriate, revising or rescinding WOTUS.

- The Regulatory Impact Analysis (RIA) for WOTUS is anywhere between \$600 million and \$1.2 billion.

- The American Farm Bureau Federation says this action will help provide transparency for America's farmers and ranchers.

- EPA will propose as a first step to withdraw the WOTUS rule, reverting as an interim measure to familiar 2008 guidance (which represents the *status quo* due to the court stay of WOTUS). EPA will then, in the second step of this two-step process, promulgate a replacement rule. EPA has recently begun federalism/stakeholder outreach to explain this process to the public, states, trade groups, and other organizations.

EPA is making decisions based on public data and science by denying a petition to ban the pesticide chlorpyrifos.

- [REDACTED] EPA denied a petition from the NRDC and the Pesticide Action Network North America, which was asking EPA to ban one of the most widely-used pesticides in the world because there was never enough science to justify the ban.
- [REDACTED] Chlorpyrifos is used today at about 40,000 farms on about 50 different types of crops, ranging from almonds to apples.
- [REDACTED] USDA said the decision was based on sound science and will provide Americans with access to a full range of fruits and vegetables.

Stopping Methane ICR: The EPA sent 15,000 letters to American energy producers telling them they no longer have to respond a letter that EPA sent back in November 2016 at the direction of the previous EPA Administrator.

- [REDACTED] EPA estimated that the cost to American businesses for Pt 1 of the ICR was \$17.9 million and the cost for Pt 2 of the ICR was \$24.5 million, for a total of \$42.4 million. EPA would also have a \$800K annual burden.
- [REDACTED] EPA businesses they no longer have this additional bureaucratic burden, so these companies and the public can save money and move closer, faster to capturing any methane from escaping into the air.

Launched EPA Regulatory Reform Task Force: We are undergoing extensive reviews of the misaligned regulatory actions from the past administration.

- [REDACTED] Industry groups such as the American Coal Council have applauded the administration's efforts to "restore balance and fairness to the regulatory process, support job creation, strengthen energy independence and lay the foundation for rebuilding and sustaining our nation's vital coal industry."
- [REDACTED] Our Regulatory Task Force has scheduled stakeholder meetings and consultations in all major program offices and areas to solicit input on rules that should be revisited or rescinded and those meetings are underway. We have issued a notice soliciting public comment in the Federal Register allowing the general public to weigh in on this process.

Delayed Risk Management Plan (RMP Rule). EPA delayed the RMP rule to ensure that any expansion of the RMP program is necessary to make chemical facilities safer, and doesn't subject facilities to even more burdensome, duplicative and needless regulation.

- RMP rule estimated to cost \$131.8 million annually, or \$1.3 billion over ten years, according to EPA's own estimates in the [Federal Register document](#) (pg. 4597)

- Louisiana Attorney General Jeff Landry, leading a coalition of 11 states, filed a Petition for Reconsideration on the RMP rule, explaining "This ill-advised decision subjects facilities to even more burdensome, duplicative, and needless regulation; but it also makes all of us more vulnerable to security threats."

- According to a petition filed on behalf of the RMP Coalition, consisting of relevant industry groups, this rule undermines safety, creates significant security risks, and does nothing to further prevent criminal acts that threaten facilities.

Getting real results at Superfund sites.

- Kicked-off cleanup at West Oakland (CA) Superfund site; celebrated the start-up and installation of a groundwater and soil treatment system at the AMCO Chemical Superfund site.

- "It is hard to put up with something harmful being there underground, close to your home. It is a relief to know it is going to be gone for good," said Oakland resident Queen Thurston, who was among a group of protestors that staged rallies calling for an investigation into the environmental condition of the area in the 1990s.

- Resuming cleanup and removal of contaminated soil from residences at the East Chicago (IN) Superfund site. Reached an agreement with several potentially responsible parties to fund part of the work valued at an estimated \$16 million – in addition to the \$26 million already secured for work under a 2014 consent decree. Worked with State of Indiana to provide funding under State Revolving Loan Fund for drinking water upgrades, water filters, and bottled water.

- Overseeing the second phase of \$43 million cleanup of Pompton Lake (NJ).

Allocating funds for vital environmental projects that go directly to the health of our citizens.

- EPA awarded \$100 million to upgrade drinking water in Flint, Michigan.

- [REDACTED] Flint Mayor Karen Weaver expressed gratitude for the funding. "The City of Flint being awarded a grant of this magnitude in such a critical time of need will be a huge benefit," she said.
- [REDACTED] Committed additional funds surrounding the Gold King Mine release, bringing the total investment to \$29 million.
- [REDACTED] Awarded \$380,000 to Dine College for an abandoned uranium mine study in Arizona.
- [REDACTED] Awarded a \$1.09 million Diesel Emissions Reduction Act (DERA) grant to the historic Gees Bend Ferry in Wilcox County, Alabama. Provides partial funding to develop the first zero-emission passenger/vehicle ferry of this type in the U.S., and the second in the world.

Opened the application process for EPA's WIFIA program; a low-risk loan for businesses that will provide \$1 billion in credit to finance over \$2 billion in water infrastructure investments.

- [REDACTED] This program helps private companies and commercial developers update infrastructure and invest in local economies, adding jobs through a public-private partnership.
- [REDACTED] The program was so popular, we received 43 letters of interest, seeking \$5.4 billion in credit assistance.
- [REDACTED] American Water Works Association members stressed that WIFIA, which makes available low-interest federal loans for large water projects, represents the perfect balance between federal assistance and local responsibility. WIFIA is being funded for the first time in 2017 at a level of \$20M, which can leverage \$1B in loans.

Since sworn in on February 17, Administrator Pruitt has met with 21 bipartisan governors, seven bipartisan Members of Congress, three leaders from other countries and over a dozen bipartisan and nonprofit organizations.

- [REDACTED] "Canada and the U.S. can work together on a continental approach to energy and the environment that focuses on technological innovation like CCS and clean coal initiatives without tax and regulatory policies that cost jobs," said Saskatchewan Premier Brad Wall.
- [REDACTED] "[Administrator Pruitt] clearly understands the EPA's proper role in government – educating and empowering, not proscribing and punishing. It's also

refreshing to have a federal agency actually listen to a state's concerns," said Idaho Governor Butch Otter.

EPA Administrator Pruitt launched a *Back-to-Basics* agenda, touring a Pennsylvania coal mine, a Missouri power plant, and visiting a contaminated Superfund site in E. Chicago.

- [REDACTED] As first EPA Administrator to visit the USS Lead Superfund site in East Chicago, which was listed on the National Priorities List of the worst contaminated sites in the country in 2009.

- [REDACTED] Barbara Bolling-Williams, state president of the Indiana branch of the NAACP, said she is cautiously optimistic following Pruitt's visit to E. Chicago.

- [REDACTED] "This is a historic event for the state of Missouri and electric cooperatives. This is the first time that an administrator of the [EPA] has actually come to one of our energy plants in Missouri to view some of the things that we've done as electric cooperatives as far as our environmental stewardship record," says Barry Hart with the Association of Missouri Electric Cooperatives (AMEC).

- [REDACTED] "We welcome Administrator Pruitt to Southwestern Pennsylvania and are very encouraged by the new Administration's commonsense approach in balancing the need for environmental protection, energy development and economic growth," said Jimmy Brock, CEO of CNX Coal Resources.

Given the broad-reaching economic implications of the Mercury and Air Toxics Rule (MATS rule), we are reviewing the costs of the rule to determine whether it is in line with the pro-jobs, pro-growth directives of this Administration.

- [REDACTED] States and energy companies will no doubt celebrate the EPA's reviewing of MATS, seeing it as the next step in the Trump administration's plan to cut most federal regulations imposed during the Obama administration ... MATS has probably had the biggest impact on coal-fired power plants of any EPA regulation. A record nearly 14 gigawatts of coal-fired power was shut down in 2015 — the first year MATS went into effect.

- [REDACTED] Industry groups such as the National Mining Association have long opposed the rule, saying that it has been responsible for shutting down numerous coal-fired power plants and eliminating jobs. "The Mercury and Air Toxics Standards has already had far-reaching and costly impacts not only on our industry but on many states and their citizens whose assurance of reliable electricity supply has been cast in doubt by this rule," the group has argued. "EPA's rule reflects a stunningly unbalanced approach to regulation. The agency decided to impose expensive standards for certain emissions that it never found posed a threat to public health."

Asked the court to postpone oral arguments over an Obama-era rule making 36 states rework their Clean Air Act compliance plans, or the Start-up, Shutdown and Malfunction (SSM) Emissions requirements set by State Implementation Plans (SIP) issued pursuant to the Clean Air Act and subject to EPA's federal oversight.

- The 2015 rule, SSM SIP call, made 36 states rewrite their plans to comply with the Clean Air Act, to remove shields for power plants and refineries emitting extra pollutants during startup, shutdown or malfunctions.

- Florida Attorney General Pam Bondi said that the EPA's final rule is a "heavy-handed federal overreach [that] threatens to upend a system that the EPA has approved multiple times." She said that the EPA's "imprudent rush to settle the matter has led the agency to adopt an illegal final rule that is in conflict with the Clean Air Act and imposes on Florida's right to determine the most effective strategy for achieving air quality standards."

- In an opening brief, filers said the agency is improperly attempting to expand its authority. The brief was filed by a broad coalition of energy companies, utilities and industry organizations, along with several states and state agencies asking the D.C. Circuit to strike down an Obama-EPA requirement that 36 states revise emissions exemptions related to startup, shutdown and malfunction events.



May 15, 2017

U.S. Environmental Protection Agency
Office of Regulatory Policy and Management
1200 Pennsylvania Ave, N.W.
Mail Code 1803A
Washington, D.C. 20460-0001

Submitted via www.regulations.gov; Docket ID: EPA-HQ-OA-2017-0190

Re: Evaluation of Existing Regulations

To whom it may concern:

CropLife America (CLA) appreciates the opportunity to submit these comments in response to the request for input, published in the Federal Register on April 13, 2017 by the United States Environmental Protection Agency (EPA or the Agency), seeking input on regulations that may be appropriate for repeal, replacement, or modification. The request for input references the February 24, 2017 Executive Order 13777, "Enforcing the Regulatory Reform Agenda."

CLA is the national trade association that represents the manufacturers, formulators and distributors of pesticides in the United States. CLA's member companies produce, sell and distribute virtually all the vital and necessary crop protection and biotechnology products used by American farmers, ranchers and landowners.

CLA recognizes the burden placed on American industry and agriculture by unnecessary, duplicative, or over-complicated regulations, no matter how well-intentioned. We support efforts to streamline and return common sense to the regulatory process. We also recognize, however, that the opportunities for reform are many and that a prudent approach to determining how best to meet these challenges will help us achieve our goals with minimum disruption to ongoing activities.

Many industries, including our own, depend on a predictable, science-based regulatory process to allow products to reach their intended customers – in our case, American farmers, ranchers and landowners – in a timely fashion. CLA's members' products must be registered (licensed) by the Agency, for use on food crops. This registration process must also establish "tolerances" for residues on those crops - regulations promulgated under the Federal Food, Drug, and Cosmetic Act (FFDCA). Our members support these regulatory actions, in part, through a user-fee program. American farmers and the entire food chain depend on this regulatory system to ensure that pesticides are used in a manner that is safe for food production and the environment.

Background. As the Agency is aware, pesticides protect the world's food supply, infrastructure, and public health from pests, weeds, and diseases. Farmers cannot grow enough food to feed the

Representing the Crop Protection Industry

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world's population on existing farmland without the ability to control weeds, plant diseases, insects, and other pests. Pesticides play important roles in public health and safety, as well. They protect the public from mosquito- and tick-borne illnesses, and antimicrobial pesticides protect against deadly microorganisms. More familiar to many consumers, pesticides protect homes and other structures from cockroaches and rodents, and keep yards, parks, and playgrounds free of weeds and other pests.

The Agency closely regulates the use of pesticides in the United States. No one may sell or distribute a pesticide product without first submitting a registration application to EPA's Office of Pesticide Programs (OPP). Following the industry investment in a decade or more of effort and hundreds of millions of dollars in research and development costs, OPP scientists evaluate each pesticide to ensure that it will not pose unreasonable adverse effects to human health or the environment, pursuant to its authority granted under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). As mentioned above, EPA grants a license or "registration" for pesticides that pass EPA's rigorous evaluations. The registration permits a pesticide product to be sold, distributed, and used in accordance with its EPA-approved label.

For pesticides used on food crops, the FFDCA also requires EPA to set tolerances through rulemaking for the legal limit of pesticide residue that may remain in or on each food or feed commodity harvested from a treated crop. In setting a tolerance, EPA makes a safety determination that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue ..." The FFDCA includes strong provisions for protecting infants and children, as well as other sensitive subpopulations.

A timely, predictable process for the pesticide registration process and tolerance rulemaking supports American manufacturing and agriculture by allowing growers predictable access to crop protection tools made by American companies. Registrations and tolerances help assure consumers in both the United States and other countries that food grown by American farmers is safe to eat.

Congress has repeatedly affirmed the need for a streamlined approval process for pesticide registrations funded in part by registration and user fees. The Pesticide Registration Improvement Act (PRIA) and subsequent iterations require that EPA make a registration determination on a manufacturer's pesticide application within the time specified in the PRIA statute. Similarly, for pesticides to be applied on food crops, PRIA sets timelines for EPA to make tolerance decisions.

Comments. We support the mission and purpose of OPP in its work on the processes outlined above. OPP serves as both a regulator and a licensing agency, whose goal is to fairly assess whether a given pesticide product can be properly labeled for its intended use with no unreasonable adverse effects. EPA's registration and label instructions represent the objective, risk-based standard that assures the public that lawful crop protection tools are available and meet the applicable standards.

Notwithstanding the regulated community's support for OPP's mission, the Agency is in serious need of reset to preserve risk-based regulation for pesticides based on sound science and a

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predictable regulatory process. Most urgently, CLA encourages the Administration to provide thorough, thoughtful review of OPP with scrutiny of departures from established policy, due process, and sound science that occurred in recent years. Lapses in EPA's risk assessment process (timing for registration and registration review) have threatened not only the effectiveness, but availability of a robust toolbox of crop protection products for American farmers, ranchers and landowners.

Resetting the process and science, and restoring transparency and predictability to the registration and review of pesticides, will resolve many product- and issue-specific concerns.

We also are very concerned about recent attempts to create policy without appropriate notice and public comment, using less formal and less transparent means instead.

Although not an exhaustive list, the following specific recommendations are deserving of action and oversight:

- **Reauthorize PRIA** - OPP is uniquely situated among the other offices within EPA in that it serves the critical function of reviewing and registering pesticides for the private sector – providing verification that a pesticide meets EPA's registration standards. To ensure a robust foundation for OPP's proper operation, CLA asks that the Administration support reauthorization of PRIA. This program is the private-sector-funded fee-for-service system that provides OPP a portion of the resources needed to complete timely pesticide registrations, and provides registrants business certainty and regulatory predictability, allowing proven and new technologies to reach pesticide users more quickly.
- **Develop Meaningful Endangered Species Act Reform** - We can do better when it comes to the proper implementation of the Endangered Species Act (ESA). The pervasive misapplication of the ESA across the regulated business spectrum and the ongoing dysfunctional working relationships among OPP, the Fish and Wildlife Service, and the National Marine Fisheries Service continue to frustrate the harmonization of ESA and FIFRA.
- **Restore Process and Science, Use Input Provided by the United States Department of Agriculture (USDA)** - Certain pending actions and recent policies are not consistent with the underlying science, or do not comply with the Agency's principles of transparency, or are otherwise not fully developed. These actions should be delayed until the policies are fully developed and the underlying science is determined to be reliable as the basis of decision-making. It is critically important that USDA's expertise and advice be meaningfully incorporated into all actions. An Executive Order that delays certain OPP actions until proper process and sound science are sorted out and restored could be helpful in this regard.
- **Zika Funding** - CLA urges the Administration to budget funding to states to support pest control operations and to support development of technology and products to deal with the Zika virus and its mosquito vectors. Surveillance and control of mosquitos is as important as vaccine development.

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Other issues of concern such as the Waters of the United States (WOTUS) Rule are outlined in comments to this docket made by the Pesticide Policy Coalition and the American Farm Bureau Federation, both of which we incorporate here by reference and fully support.

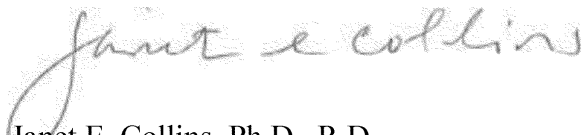
CropLife America believes that we can achieve our national environmental goals, including preservation and enhancement of biodiversity in agricultural landscapes, while maintaining and improving agricultural productivity, but to do so, we need effective, science-based federal policy.

The work done by OPP is critical to protect the environment, while serving the needs of America's farmers, ranchers, landowners, and consumers. CLA is proud to support that work. However, improvements can be made to provide greater clarity, greater reliance on sound science, and greater certainty for agriculture, the regulated community and other stakeholders. This will benefit farmers and ranchers across the country, as well as CLA's members with domestic manufacturing facilities. CLA would be pleased to provide greater detail on these issues and to discuss these matters more fully.

Should you have any questions or wish to discuss this matter, please contact me directly by email (jcollins@croplifeamerica.org) or telephone (+1-202-833-4474).

Thank you for your consideration of these comments.

Respectfully,



Janet E. Collins, Ph.D., R.D.

Executive Vice President, Science and Regulatory Affairs

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PPC

PESTICIDE POLICY COALITION

A Coalition Working for Sound Pest Management Policies

May 15, 2017

U.S. Environmental Protection Agency
Office of Regulatory Policy and Management
1200 Pennsylvania Ave. NW.
Mail Code 1803A
Washington, D.C. 20460-0001

Submitted via Federal eRulemaking Portal

Re: Evaluation of Existing Regulations; Docket ID No. EPA-HQ-OA-2017-0190

The Pesticide Policy Coalition (PPC or “the Coalition”) is pleased to submit comments to the U.S. Environmental Protection Agency (EPA) on its evaluation of existing regulations in accordance with Executive Order (EO) 13777, Enforcing the Regulatory Reform Agenda.

PPC is an organization of food, agriculture, forestry, pest management and related industries that support transparent, fair and science-based regulation of pest management products. PPC members include: nationwide and regional farm, commodity, specialty crop, and silviculture organizations ; cooperatives; food processors and marketers ; pesticide manufacturers, formulators and distributors ; pest-and vector -control operators ; research organizations ; and other interested stakeholders. PPC serves as a forum for the review, discussion, development and advocacy around pest management regulation and policy.

COMMENTS

The following comments refer to the regulations and policies PPC has identified as top candidates for regulatory reform actions, including modifications, replacement and/or elimination of specific regulations, or requirements within those rules. These recommended reforms will further the Administration’s goals set forth in the EO of

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eliminating regulatory requirements that inhibit job growth, impose burdensome costs that exceed environmental benefits, are unnecessary and ineffective, or are not substantiated by available data or are inconsistent with the data guidelines implementing the Information Quality Act.

I. Modifications and Revisions

A. Certified Applicator and Training Rule (82 Fed. Reg. 952).

The previous Administration recently finalized a regulation on certification and training of applicators of restricted use pesticides (RUPs). The responsibility of administering pesticide applicator certification programs rests solely with state, tribal and territorial authorities. EPA would not be able to effectively implement the program without this federal-state partnership. The certification and training rule brings a number of significant changes and increased certification requirements with which applicators must now comply, and state certifying authorities must implement in their respective state certification plans. The final rule underestimates the time and cost to overhaul state certification programs. Implementation of the rule is a resource-intensive process, and in some states will require legislative actions. Among other changes, the new rule sets a new minimum age requirement for commercial RUP applicators at 18 years. Prior to the new rule, individuals under the age of 18 could apply RUPs if they met certification and training requirements. No health or environmental risk or rationale is provided to justify or support such change. Further, several states allow individuals under 18 to apply RUPs. Implementation of the new age limit will require many of those states to pursue legislative action to amend applicable state law without any benefit to public health or the environment.

Faced with a largely unfunded federal mandate, and limited resources, some state legislatures could recommend returning the program to EPA. EPA does not have the capacity to run programs of the same scale, depth and caliber as do the state and local partners. Any loss of state/local partnerships would result in a significantly pared down program and potential increased risks to public health and the environment.

The PPC recommends that EPA modify the rule to eliminate the minimum age requirement. Absent the federal requirement, individual states are free to set age requirements at the state level, and the removal of this requirement will alleviate the need for state legislative actions in several states. The PPC also recommends that EPA delay implementation of the final rule and work with state authorities to identify a realistic implementation timeline to provide flexibility to account for states' resource concerns and needs.

B. Agricultural Worker Protection Standard (80 Fed. Reg. 67496)

Promulgated in November 2015, EPA's new worker protection standard (WPS) for agricultural workers increased the frequency of required training, added recordkeeping requirements and introduced new concepts, including the "application exclusion zone" and "designated representative." Most of the new standard's requirements became effective in January 2017, in spite of a petition filed by groups representing farmers and state departments of agriculture requesting a delay to provide adequate time for implementing the changes. EPA failed to provide state lead agencies with enforcement guidance and training materials, and resources necessary to effectively implement the rule ahead of the effective date and to assist farmers and ranchers with compliance.

The PPC remains concerned about the concept of a "designated representative." Farmers and ranchers are entitled to a reasonable expectation of privacy in their businesses; this provision in the rule could result in disclosure of confidential and proprietary information, and also subject farmers to harassment and unfair criticism for the lawful and safe use of EPA-approved pesticides on their properties. EPA has not provided any assurance to growers that fraudulent requests by designated representatives will not expose them to legal liability, nor has EPA taken steps to limit disclosure of proprietary farm data to unrelated third parties. At no time has EPA brought forth evidence demonstrating that the provision would result in greater worker safety. The PPC urges the Task Force to recommend a revision of the WPS to eliminate or revise this "designated representative" provision to restore reasonable privacy protections for farmers and ranchers.

The Coalition also recommends that EPA amend the final WPS rule to eliminate the Application Exclusion Zone (AEZ). The AEZ created a one-hundred foot buffer surrounding the application equipment that, according to the regulations now in place, extends beyond the agricultural establishment. The AEZ prohibits pest mitigation activities if there is any kind of structure, permanent or otherwise, inhabited or vacant within one hundred feet of the agricultural establishment. Additionally, any individual, structure, or a passing vehicle within one hundred feet of the property can effectively cease the grower's application activity. This provision unduly burdens state agencies and growers without any additional regulatory benefits. Subsequent to finalization of the WPS rule, EPA's Office of General Counsel was working to issue interpretive guidance clarifying the EPA's intent under the final regulation. Guidance does not carry the weight and authority of a codified federal regulation and does not provide the necessary clarity for state agencies tasked with compliance and enforcement activities, and regulatory certainty for farmers and pesticide applicators. The PPC recommends modifying the final WPS rule to remove the AEZ provision.

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Finally, in order for states and local authorities to implement the final rule, and to account for necessary training and certification, the PPC encourages the Task Force to recommend the WPS rule be revised to delay the effective date until 2018 at the earliest.

C. National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit (PGP)

The PPC urges the Task Force to recommend modifications of the NPDES PGP requirements to decrease reporting and recordkeeping burdens. The PGP was first issued in 2011 in response to a 6th Circuit Court of Appeals decision. In that litigation, EPA was aligned with the regulated community in opposing the imposition of Clean Water Act (CWA) permitting requirements for pesticide applications into, over and near Waters of the United States. Pesticides and pesticide applications are regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). All pesticides undergo a rigorous review process before being approved by EPA for use. Such testing requirements include extensive studies examining potential human health and environmental effects. FIFRA requires that pesticides used according to label instructions will not generally cause unreasonable adverse effects on the environment. Under FIFRA, applicators also are required to keep detailed records documenting the time, location, type of pesticide, target pests, amount of pesticide applied and pesticide application method. Applicators also must report any knowledge of adverse incidents associated with the use of such pesticides. Failure to comply with FIFRA requirements can result in civil and criminal penalties.

The dual regulation of pesticide application under FIFRA and CWA is duplicative, burdensome, and does not result in enhanced environmental benefit or protection. The potential legal jeopardy from CWA citizen suits for alleged PGP violations has had a chilling effect on the industry. An operator could spend substantial resources defending against a CWA citizen suit for alleged failure to meet reporting and recordkeeping requirements—mere paperwork violations that do not result in environmental harm. The PGP includes a provision that holds all operators jointly and severally liable for violations that occur in connection with permitted activities, including any action or inaction of others that is beyond their control. The threat of legal jeopardy has led some applicators to decline contracts for mosquito-control services. The Benton County Mosquito Control District in Washington State has set aside twenty percent of its annual budget in the event that it becomes party to a CWA lawsuit. These resources could be better spent combatting mosquito-borne illnesses, including the Zika virus.

The PPC recommends scaling back the permitting requirements to eliminate Notice of Intent and annual reporting and recordkeeping requirements, as well as the

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permit's joint and several liability provision. An operator should only be held liable for those permitted activities that are completely within his/her control.

II. Process and Policy Reform

The Task Force should consider long overdue reforms of EPA's process and policies that form the foundation for regulatory decision-making. While not regulations per se, under FIFRA, pesticides undergo rigorous study, and registrants spend an estimated \$ 250 to 280 million to evaluate risk to human health and the environment prior to pesticide registration with label uses approved by EPA. Pesticide products play a vital role in crop production and public health. The rotation and mixture of a variety of pesticide products is integral to integrated pest management. The availability of a wide array of pesticide products is critical to the sustainable and safe use of pesticides and resistance management.

In recent years, EPA's risk assessment approach as part of a FIFRA pesticide registration and registration review has deviated dramatically from the fair, transparent, and risk-balancing process that Congress intended. EPA has relied on flawed science, including data that lacks reliability and reproducibility, in proposed tolerance revocations for a number of pesticide active ingredients. EPA has previously proposed revoking all tolerances for chlorpyrifos based largely on epidemiological studies that EPA's FIFRA Scientific Advisory Panel (SAP) questioned. EPA has failed to address the significant concerns expressed by three FIFRA SAP on these risk assessments, including lack of study validation and unavailability of raw data from studies used in regulatory decision making. Other respected regulatory agencies around the world have reviewed these epidemiological studies and rejected their use in risk assessments that way that EPA has proposed. These data quality issues also run afoul of reproducibility and transparency standards required by the Information Quality Act. EPA's drinking water assessment for chlorpyrifos and many other compounds need further refinement to avoid overly conservative and unrealistic exposure scenarios. Similarly, EPA's preliminary ecological risk assessment for pyrethroids—an entire class of pesticides—relies on modeling approaches to develop a risk assessment for ecological exposure to the pesticides that is not reflective of actual exposure. The models grossly overestimate exposure and will result in the loss of critical tools for farmers.

In December 2016, EPA's Office of Pesticide Programs (OPP) released its "Framework for Incorporating Human Epidemiologic & Incident Data in Risk Assessments for Pesticides" (Framework). This Framework has not been the subject of public notice and comment and requires stakeholder review. As such, the Administration should review and revise the framework with input from relevant

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stakeholders, and subject to peer review, before it is used to inform any regulatory decision-making.

The PPC encourages a return to a risk-based approach that is fair, transparent, and relies on verifiable scientific input. The PPC recommends delaying the finalization of these recent actions until further review and refinements ensure that overly conservative and unsupported limitations are not placed on these pesticide products.

CONCLUSION

The PPC appreciates the opportunity to provide input on regulations for the Task Force's recommended regulatory reform actions. The success of many federal regulations hinges on partnerships with state and local authorities, and EPA should ensure those vital authorities have adequate time and assistance with implementation of new rules and standards. As highlighted above, many regulations do not result in increased net environmental benefits, and in some cases may even divert resources from environmental and public health protection efforts. Finally, any regulatory review should examine the processes and policies that have informed regulatory decisions, and ensure that actions are based on sound and credible science. We look forward to working to further assist the Task Force and Administration with identifying ways to decrease ineffective regulatory burdens on agricultural interests that hinder economic growth and innovation.

Sincerely,



Ethan Mathews
Chair, Pesticide Policy Coalition



Beau Greenwood
Vice Chair, Pesticide Policy Coalition

EPA'S LOCAL GOVERNMENT ADVISORY COMMITTEE (LGAC) DRAFT CHARGE ON 'WATERS OF THE U.S.' (WOTUS)

OVERVIEW

1. Background and Description

On February 28, 2017, the President signed the Executive Order on *Restoring the Rule of Law, Federalism, and Economic Growth* by Reviewing the "Waters of the United States" Rule (issued June 2015).¹ The Executive Order gives direction to the Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule (CWR) and "publish for notice and comment a proposed rule rescinding or revising the rule." The E.O. also directs that EPA and the Army "shall consider interpreting the term 'navigable waters' in a manner "consistent with Justice Scalia's opinion in *Rapanos* ²which includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

As part of EPA's efforts to consult with state and local government officials, EPA's Local Government Advisory Committee (LGAC) will provide its recommendations to the Administrator on revising the definition of "Waters of the United States" (WOTUS) and identifying ways to reduce the regulatory burden on local communities as well as balance that with environmental protection.

2. Project Scope

The agencies intend to follow an expeditious two-step process to provide certainty with the rule:

- 1) Establish the legal status quo by re-codifying the regulation that was in place prior to issuance of the CWR now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
- 2) Propose a new definition of Waters of the U.S. that would replace the 2015 CWR that reflects the principles outlined by Justice Scalia (*Rapanos* plurality opinion).

The LGAC consists of 36 local, state and tribal government elected and appointed officials representing cities, parishes, counties, municipalities, and other local political jurisdictions. Local officials are knowledgeable and provide unique perspectives on issues relating to a revised rule. Further, the LGAC has potential to engage other knowledgeable local officials with unique valuable on-the-ground perspectives and knowledge. Through this collaborative process, the chartered LGAC will provide Administrator Pruitt with expeditious and meaningful advice relating to a revised "Waters of the U.S." rule. Overall, the goal would be to develop recommendations to the EPA for consideration on a revised rule. This advice and recommendations come from an 'on the ground' local government perspective which will assist the agency in providing the best means to communicate a revised rule with local officials.

¹ <https://www.whitehouse.gov/the-pres-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

² *Rapanos v. United States*, 547 U.S. 715 (2006) 126 Supreme Court 2208; 165 L.Ed. 2d 159

3. Charge Issues

LGAC Charge:

The LGAC will develop recommendations for the EPA to consider in developing approaches to a revised rule defining “waters of the U.S.” that ensures that the nation’s waters are kept free from pollution while at the same time promoting economic growth and minimizing regulatory uncertainty. The following are specific charge questions and issues for the LGAC to consider:

Charge Questions

- 1) How would you like to see the concepts of ‘relatively permanent’ and ‘continuous surface connection’ be defined? How would you like to see the agencies interpret ‘consistent with Scalia’? Are there particular features or implications of any such approaches that the agencies should be mindful of in developing the step 2 proposed rule?
- 2) What opportunities and challenges exist for your locality with relying on Justice Scalia’s opinion?
- 3) Are there other approaches to defining “waters of the U.S.” that you would like the agencies to consider to providing clarity and regulatory certainty?
- 4) The agencies’ economic analysis for step 2 intends to review programs under CWA 303, 311, 401, 402 and 404. Are there any other programs specific to your locality that could be affected but would not be captured in such an economic analysis?
- 5) What additional information can you provide from a local government perspective that EPA should be aware of?
- 6) Are there other issues the agencies should consider which would help ease the regulatory burden for implementation of WOTUS for state, local and tribal government?
- 7) What should the agencies consider in communicating the final rule to state, local and tribal governments to help them fully understand these regulatory changes and implementing them efficiently and most cost-effectively?
- 8) The Workgroup will also develop recommendations on how the EPA can better work with local governments and engage local governments on issues such as: What additional regulatory issues could be revised or clarified to more effectively to help local governments understand how this rule would apply? Are there additional policy discussions that could help address local questions about implementation, in agricultural and rural small communities? Are there other considerations such as ditch maintenance, stormwater management or green infrastructure?

4. Deliverables

The LGAC will provide a letter of recommendation to the Administrator to identify approaches to consider in a revised “Waters of the U.S.” rule. The chartered LGAC will prioritize and summarize these issues in a report to the EPA that focuses on the charge issues. A final LGAC report will be conveyed to the EPA Administrator with a transmittal letter summarizing findings and recommendations. This Report will be published on the EPA’s website for LGAC.

5. Preliminary Timeline/Schedule

April 26, 2017 – Executive Committee meets to discuss and approve the LGAC’s Charge (Protecting America’s Waters Workgroup) and develops a work plan with timeline.

May 3– LGAC’s Protecting America’s Waters Workgroup meets to discuss charge (via teleconference).

May 18- LGAC’s Protecting America’s Waters Workgroup meets with National Intergovernmental organizations to discuss charge (via teleconference).

June 7 – LGAC’s Protecting America’s Waters Workgroup meets to discuss charge (via teleconference).

June 29, 2017-The LGAC meets in a public meeting (via teleconference) to review recommendations on rescission of the 2015 CWR and revising the CWR. (Deliverable: Letter of Recommendation)

EPA's Local Government Advisory Committee (LGAC) | 2017

Protecting America's Waters Workgroup

Thursday, May 18, 2017

4:30 PM- 5:30 PM ET

NOTES

Participants

LGAC and Workgroup Members

Mayor Elizabeth Kautz
Commissioner Robert Cope
Mayor Steven Williams
Council Member Brad Pierce
Chairman Shawn Yanity
Mayor Mark Stodola
Commissioner Victoria Reinhardt
Kevin Shafer
Representative Tom Sloan
Scott Bouchier
Mayor Bob Dixon
Supervisor Ryan Sundberg

EPA Participants

Demond Matthews
Jack Bowles
Fran Eargle
Damaris Christiansen
Sarah Greenwaldt

Other Participants

Mark Limbaugh-Association of Towns and Townships
Judy Sheahan, U.S. Conference of Mayors
Julie Ufner, National Association of Counties
Chris Hornback-NACWA
Adam Carpenter-AWWA
Carolyn Berndt-NLC

I. Call to Order and Opening Remarks

Susan Hann, Chairwoman

Mayor Elizabeth Kautz, Vice- Chairwoman

Purpose of Today's Meeting is: To discuss and gather input on the LGAC's Charge on Waters of the U.S. (WOTUS).

Sue Hann thanked everyone for their participation and the level of interest. She also thanked the EPA for working with the LGAC to request input on WOTUS.

EPA's Local Government Advisory Committee (LGAC) | 2017

We all agree that clean water is important. How we get there has been the subject of much debate and Analysis. That's where we are today, and where we're still trying to define what can work for everyone -from the urban areas to the rural areas to the Ag communities. And we want to do our best to make sure that we are preserving clean water while still ensuring for business interests and agricultural interests are protected as well. So it is a big job for us to work with the EPA to make those things happen.

After we have had an opportunity to hear from our EPA speakers, the floor will be open to hear from the Intergovernmental Organizations and to hear their remarks.

If you can speak from the perspectives of our charge questions and issues that will be a huge help to us. We of course would like to hear anything else that might aid us in responding to our charge.

I would now like to call on Mayor Elizabeth Kautz, Vice-chair to make any opening remarks and then call on Mayor Dixon, Chair of the LGAC for any remarks he might have for the group.

Mayor Elizabeth Kautz-Thank you, (Sue), I think you've done a great job of framing the discussion for today. And welcome to everyone. I look forward to the discussion.

Commissioner Robert Cope-We would like Members of the Small Community Advisory Subcommittee (SCAS) to give their input. We will be scheduling a meeting to discuss WOTUS and focus on agricultural and rural issues of WOTUS.

Mayor Bob Dixon, Chair of LGAC-I'd just like to thank you, Chairman Hann and Mayor Kautz for your exemplary leadership on the water work group and especially on WOTUS. Like to thank (Tate Bennett) and her involvement in the process. We had a wide representation of local stakeholders with us today as far as engaging on the issues of WOTUS. And that collaboration is so important.

Of course, we all remember that LGAC in 2014 heard from so many stakeholders from across the country that this rule is so important that we've got to get it right. (That) we have the opportunity now to get it right.

And so, in the midst of all that I – we just – I agree with you (Sue), we're all concerned about our waters because they are so important to all of us in small, large, urban, metropolitan communities. And I'd just like to again acknowledge that Mayor DuPree testified before the House Transportation Committee (Today) on Integrated Planning. It's indeed gratifying to have a fellow LGAC member doing that and just to say that we are very proud and we're happy that he's able to do that. I also want to wrap up with a great appreciation to Administrator Truitt's Team for giving us the opportunity to give our input on WOTUS. And I also thank you all for being here, all of us on the call, and I look forward to our discussion. Thank you (Sue).

II. EPA Remarks

John Goodin, Acting Director, EPA's Office of Wetlands, Oceans and Watersheds-Thank you (Sue), Mayor Kautz and Mayor Dixon. It's good to be back on the line and continue our discussions here for the purposes of getting local government input and feedback on the proposed changes to Water of the U.S. rulemaking. I thought it might be helpful to just do a brief overview of some things that have happened since we last met and then I think we can jump into the framing questions (with) the charge and see where that – that conversation goes with your input.

Since I last spoke with you on the 3rd of May, the step one rulemaking has gone over to OMB and is in – in interagency review at this time. We also on May 9th, the administrator and the acting assistant secretary of the Army for Civil Works, co-authored a letter to governors soliciting their input from the process as we move forward.

Also, earlier this week, EPA launched a new website to provide public with information about EPA and the Army's efforts on the review and replacement of the definition of Waters of the U.S. and that website will have – we can send around the specific link to that but this replaces the website that we (had) previously for the 2015 rulemaking process and includes the important steps regarding our federalism process that have occurred up until now and includes a number of materials that we intend to add to it as this process moves forward.

On May 17th, agencies had the chance to meet with the National Governors Association that represented a variety of states from across the country. We've had continuing consultation with tribal governments, including another phone call today where we had the chance to engage participation from tribes.

We continue to stay actively connected in our outreach to local governments. Many of you have already looked over the various (charge) questions that we posed during our – our previous call (May 3rd) and I'm happy to lead the discussion of those now.

[Cindy Barger, Department of Army, Civil Works was recognized]

Cindy Barger, Department of the Army, Civil Works-Thank you so much for letting me participate. On behalf of Mr. Lamont, our senior official that's performing the duties of the assistant secretary of the Army for Civil Works, we really appreciate hearing the comments and concerns of – of everyone through this process.

We in the Corps are working very closely with EPA and Mr. Lamont and our entire Army and Corps team as well as EPA are committed to keeping the implementation of the regulatory program transparent and clear throughout this rule making process.

We know that the rule can be confusing as we are in the process of rule-making. And we're committed to make that as straightforward as possible for everyone involved. So thank you and I'm looking forward to the discussion.

Chairwoman Sue Hann-Please emphasize questions -one through four- which are questions where we

really need some additional input. Some of the others I think we've covered rather well in our previous documents so appreciate your willingness to go through that with us, go ahead.

John Goodin-The first four questions are:

-How would you like to see the concepts of relatively permanent and continuous service connection be defined?

-How would you like to see the agencies interpret the Clean Water Act provisions regarding jurisdictions in a manner consistent with Scalia?

-Are there particular features or implications of any such approaches that you want us to be mindful of as we move forward with the rule?

-The second area deals a little bit more with implications, what opportunities and challenges exist for your locality when relying on a Scalia lens for the Clean Water Act jurisdiction?

-And then another one, third questions, are there other approaches to defining Waters of the U.S. that you would like us to consider that would help in terms of providing clarity and regulatory certainty?

-And then, finally, fourth, we're going to be undertaking impact analysis, economic analysis on a new rule and we are very much interested in whether you feel there are specific programs that effect your locality that may not be captured in such an economic analysis and you want us to be made aware of.

We are focusing on CWA Sections 303, 311, 401, 402 and 404 as the key programs under the Clean Water Act. With that said I'll just provide a couple of examples. As (Sue) mentioned, that might be helpful to help move the conversation forward here that relate to these key four questions.

So with respect to understanding the Scalia opinion and how that might impact the agency's interpretation of the Clean Water Act, one of the things that we're looking at are the – the specific terms and terminology that's used to help describe these areas and I think that we would be interested, specifically, if local governments have considerations or preferences that the agency should be aware of.

And perhaps the best way to provide an example there might be in terms of providing clarity and predictability, are there key terms or terminology that local government feel we should be relying on or aware of as we move forward.

Historically we have heard that the descriptions that are sometimes used in different parts of the country to describe waterways vary quite a bit. Therefore, are there some terms that you think we should pay greater attention to? Either in avoiding or making sure they're included as examples or something like that. That would facilitate the implementation of the rule.

A second area relates to the clarity of the definitions. Definitions have come up before especially 'ditches'. In the previous LGAC Report, definitions were a fairly important area that local governments were concerned about. And there was some very helpful information that you provided at that time.

The third and final area that might help frame some of these questions in a little bit more detail is to get at locally administered programs that might be affected by any changes in the definition of Waters of the U.S.

Transportation, waste and water, drinking water, et cetera are local programs that you implement. How are these efforts tied to the Federal definitions. We certainly want to be aware of any changes or clarifications that we might provide in that context that we need to be aware of as we're moving forward.

III. Intergovernmental Organization Input

Judy Sheahan, U.S. Conference of Mayors - Thank you very much for this opportunity. First of all, I'd like to just give a caveat. The U.S. Conference of Mayors that we do not have a position and are not fully aware so that we don't have a specific policy. We are having our annual meeting coming up in a few weeks and we will be talking about WOTUS at that time. That will be perhaps a little late to provide input.

After our meeting, we'll be able to provide more specific recommendations. But we are preparing a letter with (NACo) and (NLC) that we are trying to get within the time frame. I can state that mayors do probably appreciate a common sense approach to defining Waters of the U.S.

Some of the issues that we have with the prior rule was words like '*built on dry land*.' We were concerned that our water and waste water treatment processes and even our (green) infrastructure would be looped into a Waters of the U.S. and open ourselves up to civil suits. And so we would like to caution EPA to be very mindful of that.

Related to that also, our definitions that were used last time in the area, words such as 'uplands', 'tributary', 'floodplain', 'significant nexus', 'adjacent,' and 'neighboring' were not clearly defined. We felt that they would be subject to interpretation in the various communities in the various regions and we would open ourselves up for more litigation.

I think going to the Scalia discussion, though, with the words '*relatively permanent*', that's something that's tricky. We care about waters very much and we want to protect it at all times. But we've heard horror stories about where puddles were considered a Waters of the U.S. The idea being is intermittent streams are fine. But puddles-maybe it should or should not be -considered a Waters of the U.S.

But I will also say that 'ditches' are a major concern of the counties and also for some cities as to how they would be handled, how they would be considered, and there are a number of different concerns related to that.

We would like to get the LGAC comments from our annual mayors' gathering in June and we're also preparing our joint letter with (take) and NLC that will be able to better look at the Scalia opinion and officially submit some recommendations. I do want to thank you for this opportunity to address the

Workgroup.

Chris Hornbecker, NACWA-Thank you, and we appreciate the opportunity to address the Workgroup today. Most of our input is probably around items five and six in your charge questions. And the reason for that being – our members are municipal, publically owned waste water treatment plants. And for the most part our members would discharge permits. Our permits are usually on large bodies of water that are clearly jurisdictional. So in terms of the impacts to our members from their primary discharges, regardless of the changes from the 2015 rule, this new rule for most of our major dischargers will be – will be unaffected.

I think it will be important to think about the grey areas as you all in EPA look at permits where there is a discharges where the (effluent from our waste water) treatment plant is in fact the water body or for most times out of the year the water body, stream, river, what have you, would be a dry channel.

If not for the effluent discharging from our waste water treatment plants it may not be a permanent water body and that is important to consider in that context and something to keep in mind. We haven't yet conceptualized what our position is on that, but that is an area where we are very much aware of some potential challenges in moving forward.

The only other thing that I would note that NACWA has not taken a position the 2015 rule. But what we did do was weigh in on a number of specific items that were very important to our waste water treatment. Our local municipal waste water treatment utilities and there are things that were addressed in the 2015 rule for the most part.

And we would want to ensure that they continue to be addressed in any new definitions. We will provide additional input on how these terms can be clarified. These are the existing waste treatment system exemptions.

This exemption is very important for waste water treatment plants that have large treatment units that – in some cases maybe – may have the appearance of a Water of the U.S., but in fact, our treatment units – this includes storm water, conveyance, manmade components. This was a point, actually, that the LGAC raised with EPA during the last rule making effort.

We emphasized that point from the LGAC and our comments on the proposed 2015 rule. Two other items. The brown water issue is one where I think some additional thought will need to be – additional clarification may be necessary in terms of ensuring that, that exemption is in place.

The exemption of groundwater from Water of the U.S. is in place. For our members water reuse and reusing effluent in many parts of the arid west is really important to consider.

Constructed wetlands and other types of treatment systems may again have the appearance of a Water of the U.S., but in fact are very important treatment systems that are being used to polish or provide finishing treatment for reuse water. So, those are the main issues that we had raised in the past and will continue to raise going forward. And again, appreciate the opportunity to share our perspective.

Adam Carpenter-AWWA- We thank you for the opportunity to address the Workgroup. I will echo many of the issues that Chris Hornbecker raised and add a few others as well. AWWA is a national association representing about 4,000 drinking water, waste water, and storm water utilities around the country, many of whom are very closely connected to municipalities and are on the front lines of protecting public health and the environment in communities. We participated in the 2015 rule making process and provided comments. We are looking forward to engaging in this round as well.

There are a handful of topics of particular concern and consideration that we like to try to make sure stays part of the conversation. One of them being the routine operations and maintenance of drinking water, waste water, and storm water conveyances. Aqueducts, canals, and treatment facilities, many of them may look like jurisdictional waters, but they are in fact part of treatment infrastructure that needs to be very clear that those are in fact exempted from jurisdiction. Certain types of green infrastructure also interact or become closely connected to what would otherwise be jurisdictional waters.

Some examples are infiltration trenches, (swales), artificial wetlands, groundwater, and there's others (who) ground water recharger basins, percolation ponds, water recycling facilities, and storm water retention facilities. So, just to name a few. There are quite a few pieces of water infrastructure that we definitely are concerned and want to make sure it's clear that those are outside jurisdiction.

These are some areas within the scope of the Waters of the U.S. framework that we want to make sure are very clear are not jurisdictional. Particularly, the definitions of tributaries, wetlands, (and) adjacent are going to be of particular concern in regards to this infrastructure.

And last, but certainly not least, especially on the drinking water side of the equation, we do see a bit of a balancing act and concern over what's the correct – the correct way to balance jurisdictional versus non-jurisdictional. Drinking water facilities receive the benefits of the many Clean Water Act programs that help protect source water and water quality. At the same time, jurisdictional designations can make it more difficult to create new water infrastructure that's designed to serve the public.

Many of the issues that are part of the charge like the definition of relatively permanent will play a major role in describing and understanding that sort of balance. And beyond that, we look forward to continuing the conversation, engaging with this committee and with EPA moving forward. Thank you.

Julie Ufner-National Association of Counties- Thank you for allowing me to speak. First, I do want to recognize the efforts of those on LGAC both for those who are NACo members and other local government or tribal officials. Thank you, thank you! Waters of the U.S. has been something that LGAC has been following for a while.

Your letter and that you did on the Clean Water Rule was very impressive and from NACo's standpoint, we thank you for your attention to this. Regarding the upcoming rule, NACo has been looking at it with our members. And from our standpoint, I don't think we're going to take a position on perennial waters per se, although we're asking our members to weigh in because we also recognize that this could be more of a regional decision on what types of waters need to be protected.

We're always hesitant to support a one size fits all approach just because every county across the

United States is different. Counties do own a lot of infrastructure, 45 percent of the roads, and 38 percent of nation's bridges. A lot of these roads and bridges are impacted by Clean Water Act regulations including Section 402 and 404.

Routine ditch maintenance exemption is one area of concern. However, it is used under such rare circumstances. For example, California has recapture provisions that usually recapture these exempt ditches. And it has been really problematic for a lot of our counties who all of a sudden for these public safety ditches that are used to protect citizens (from flooding etc), they can't go in to do routine maintenance like cleaning them out. This is under existing law.

Looking at changes, that could be a potential area of change. The other thing that you might want to think about is how if the court can even change their permitting. Right now, to get a section 404 permit, some of our counties are saying – especially for the flood control districts that they have to start planning the new permit once they get the old one.

The permit cycle's five years. Ideally they'd like to see a 10 year permit and it's more of a planning issue with financial benefits.

On question number seven, our preliminary thoughts on: what should the agencies consider in communicating the final rule to state, local, tribal governments to help them understand the regulatory changes? One of the things that we requested during the 2015 Clean Water Rule process were maps. If you know where Waters of the U.S. are, map them publicly so people know. Then you won't have these 'cease and desist' letters to deal with that form a lot of confusion. If you can just click on somewhere to find out. The Army Corps of Engineers I believe is already starting to put some of their Section 404 permits online so hopefully a mapping option will be there in the future. Other things, are pictures for examples. EPA will have different types of fact sheets. The fact sheets done for and by technical experts are not exactly that helpful. Fact sheets for folks doing these permits on a day to day basis is going to be a lot different than the facts sheet you need for elected officials.

Mark Limbaugh- Association of Towns and Townships-A lot of the comments said today are consistent with our Members who represent more rural areas. In terms of the Scalia approach of relatively permanent waters "it's been said that common sense should prevail here". A lot of the problems we had with the 2015 rulemaking was the fact that areas where water could flow or has flowed at one point in time were made jurisdictional even though those areas are mostly dry most of the time. We need to change that to where water is flowing all the time. And I think that relatively permanent should be consistent with year-round flows or at least most of the year flow. And then also continuous connection of surface water flow between the bodies of water during at least most of the year.

These are loose interpretations from our perspective. Certainly we'll be looking at this a lot more closely and looking at unintended consequences et cetera. But one thing is consistent with pretty much everybody that's talked today is the fact that we need to articulate the exemptions very clearly in this rulemaking including the Clean Water Act exemptions for irrigation ditches and drains, farming operations, et cetera.

The ditch exemption we have seen that used in the past successfully to protect operation maintenance of irrigation ditches. So those are important to have those in the rulemaking even though there is

regulatory guidance out there that continues to be used today.

Roadside ditches are areas where typically, you know, we're not going to see water flowing unless it is runoff during rain events, et cetera. You know, those should not be included because they impede regular (O&M) of rural roads and bridges. These kinds of things are important to rural communities and towns and townships everywhere.

We very much appreciate the opportunity to weigh in at this early point in the rulemaking and certainly look forward to continuing to work with the LGAC and the EPA and the Corps.

Carolyn Berndt- National League of Cities- I would like to echo the last couple of speakers that I heard. Our initial comment letter (2015), NLC had concerns not only about the process but also about the content. So you know, when thinking about the process, the consultation is definitely key here starting with the LGAC. So thank you!

Going forward in terms of formal consultation under federalism, there are some key things of concern. Definitions as well as the exemptions need to be clear and vetted with local governments. Echoing again that the rule should allow for regional differences in terms of, you know, which waters are considered jurisdictional and how the process is working.

There is no one size fit all. The question re: communicating the final rule. I would say, the time for compliance as well as implementation are important. Also thinking about what small communities need in particular to know or need to understand or need extra time to be able to do. And then finally, I'll say in terms of the economic analysis, expand it to several of the Clean Water Act programs.

It's not only a cost analysis that we had been looking for but also an impact on the implementation of all of those programs to make sure that there are no unintended consequences between the definitional changes and what that means on the day to day of implementation of the programs. I think that was all I generally had and again thank you for this opportunity to participate.

IV. Workgroup Discussion of the Charge

Council Member Brad Pierce- In the Workgroup meeting materials (today), there is a letter from Aurora Rural Water, commenting on the potential approaches to the Waters of the U.S. rule. So the letter that was prepared by Marshall Brown, who's the director of Aurora Water, was addressing those specific things about the potential approaches.

It references much of what was already discussed and I want to reinforce the issue of intermittent water bodies. Especially in the West, whether it is dry arroyos, washes, (ditches), ponds, and just intermittent water bodies it is really quite a big deal for us. Especially in the city of Aurora where we have a water system of reservoirs, and pumps, and pipes that take water mainly from the snowpack from the winter season down here to Aurora. That snowpack mainly melts between Memorial Day and the 4th of July. So you get a lot of runoff in those areas for about six weeks or so. But the rest of the year or especially in the in winter, a lot of these streams just don't have any water in it. And so, the term 'intermittent' is

important to Aurora.

It's also mentioned a couple times in this letter the general theme that I am hearing in this discussion is the intermittent aspect of our streams. The other thing at the end of our letter, we talk about some of the projects that are proposed may kind of steer away from projects that need Federal approval or Federal review because of the extra time it takes for a permit review and the extra cost.

In Aurora, are proposing to build a reservoir up by Buena Vista, Colorado called the Box Creek Reservoir. So that is on some Federal land, so that's going to take quite a long time to get approval.

Chairman Shawn Yanity- I definitely agree with a lot of the comments about the small streams. The continuity between wetlands and our streams are very important and one size does not fit all. The ecology here in Puget Sound is so much different than it is in other places and it is an economic treasure. We're at the base of the mountains. We're almost the same kind of atmosphere as, you know, southeast Alaska. You go on the west side of Washington and it flattens out all the way to Montana.

Regulatory issues and how you view water and how we work with water is completely different. We have saturated areas on hillsides that hold water that feed streams, continuously. And looking at Scalia's decision, our tribal perspective is that it's based on scientific evidence. And so, one comment that we would have is to remind everybody that science is very important in these decisions and the EPA is supposed to make decisions according to science and that is something we support. Not only are these waters of the U.S. navigable and important to humans, and their use and need for clean water, but in Indian country they're also navigable waters to our salmon.

Mayor Mark Stodola- no comments

Kevin Shafer-no comments

Representative Tom Sloan -provided written comments

Supervisor Ryan Sundberg-no comments

Scott Bouchier-no comments

Mayor Elizabeth Kautz- Thank you very much to all of our guest speakers and providing us with comments. I look forward to working with you. And (Sue) and I just want to thank you all for sharing your thoughts because that helps us to put together a plan that's going to be workable for all of us across the United States. And we all know that we're all different across the U.S. We heard that having clear definitions is important. So thank you very much for all of the input.

Chairman of the LGAC Mayor Dixon- Thank you. Just a couple comments as Chairman of the LGAC, and also representing the Small Community Advisory Subcommittee. There isn't a one of us out here in our small communities, or large communities, urban communities that are not concerned about our waters and we are also environmental stewards.

As stated by the many representatives of the organizations and our own LGAC members, a rule governing our nation's waters has to be clear and concise. It has to also be defensible and enforceable. We have to also keep in mind that municipalities are doing their best to protect their environment. As our grandparents and our ancestors taught us, if you take care of the land and water, it will take care of you. So we're all doing the best we can.

I so much appreciate you Chairwoman Susan Hann and Vice-chair Mayor Kautz's leadership on this and moving us forward on this important charge. We have had great input today from those representing intergovernmental agencies. And really appreciate your time and participation. This is just an exciting time for us to get together and have honest open dialogue on these important issues.

V. Wrap Up/Next Steps

Thank you, Mayor Dixon. I appreciate everyone's participation today. Some of the messages that we've heard, both from our work in the past as well as our more recent work, is that we're really looking for EPA to recognize regional differences and allow for that flexibility.

Also, the predictability in permitting is critical. Understanding what the rules are and having those rules be clear no matter what region you're in or where you are in the country, whether you're in a small town or an urban area-there things are all important. If the rules are clear and understandable, then 'most will be happy to comply.' We want to understand what the rules are and what the timeframes are for responding to permit requests.

Many of the things that we heard in our outreach in 2014 is "we just don't know what this means". We submit a permit and it takes a long time with very unclear and inconsistent responses. So if we can improve consistency and improve predictability, I think we will have accomplished a lot. So again, I just want to say thank you for everyone who has participated today. I think we got a lot of great input, especially from our intergovernmental organization partners.

And I look forward to working with you, as we move forward. Our next meeting is scheduled for June 7th, 4:30 to 5:30 Eastern Time and we'll be working towards a draft response to (the charge). And again, thank you to EPA especially. You all have been just phenomenal in soliciting our input and appreciate that we are collaborating on this very important issue for our country

Protecting America's Waters Workgroup

Wednesday, June 7, 2017

4:30 PM- 5:30 PM ET

A G E N D A

- | | |
|---------------------|--|
| 4:30-4:35 PM | Call to Order and Opening Remarks
<i>Susan Hann, Chairwoman</i>
<i>Mayor Elizabeth Kautz, Vice- Chairwoman</i>

<i>Mayor Bob Dixon, Chair of LGAC</i> |
| 4:35-4:40 | Welcome Remarks
Tate Bennett
<i>Senior Advisor, Intergovernmental Relations</i> |
| 4:40-4:45 | Waters of the U.S. Charge
<i>John Goodin, Acting Director</i>
<i>EPA's Office of Wetlands, Oceans and Watersheds</i> |
| 4:45-5:25 | Workgroup Discussion of WOTUS Issues and Charge |
| 5:25-5:30 | Wrap-Up/Next Steps
<i>Susan Hann, Chairwoman</i> |

Major Themes-WOTUS Issues

➤ **Water: Our Nation's Health and Wealth**

Water resources are the lifeblood for our nation's cities, towns and small rural communities. It is essential for the health, prosperity and security for our citizens and is among the top priorities for us in local governments. As State, local and tribal government partners we desire to manage our water resources so that we have reliable and safe water supplies to create jobs, attract industry and investment, and provide for the health and welfare of citizens. A common understanding of the value of water and how it impacts the health and prosperity of us at the local level is important for governmental decision-making. For example, water infrastructure costs are estimated to be \$100 per household per year, for smaller communities, these same costs are \$400 to \$800 more per year.¹ Estimates range for every \$1 million investment in water infrastructure it supports between 15 and 18 jobs throughout the economy. Disruption in our nation's water supply, would greatly impact our economy on a large scale.² For example, one day's disruption for the service industry would result in a 70% reduction in sales. For the petroleum industry (highest), the loss would be \$5,800 per employee (7 days the equivalent of 1% of annual income). Therefore, protections under the Clean Water Act for the 117 million people (one third of Americans) that rely on these waters as part of our public drinking water assets are local decisions of public trust and stewardship. Balancing the CWA authorities to protect rivers, lakes, streams and wetlands and to keep them healthy and safe is the responsibility of all levels of government. At the same time costs of treatment should not be transferred to the directly to rate payer - *at the tap*.

➤ **Local Governments and Cooperative Federalism**

The Clean Water Act (CWA) as amended in 1972, established the basic structure for protecting our nation's water resources by regulating pollutant discharges into the waters of the United States. Clean Water Act programs are largely federal, state and tribal programs. The CWA Section 404 is an EPA and Corps of Engineer (joint program) which regulates discharges of dredged or fill materials into Waters of the United States, including wetlands. On February 28, 2017, the President of the United States issued an Executive Order directing EPA and Department of the Army to review and rescind or revise the 2015 Rule. The EPA and the Army Corps of Engineers are in the process of considering a revised definition of "Waters of the United States" consistent with the Executive Order. Local governments support a straight-forward rulemaking process, inclusive of the tenants of cooperative federalism. This approach acknowledges the shared responsibility of state and local governments in the governance and cooperation to work out details of responsibility. CWA Section 404 is largely federal with the exception of a small number of State Assumed 404 Programs (Michigan and New Jersey). If empowered, states and tribes could play an increased and more efficient role in managing the program. Local governments too, have a strong role to play and can be key strategic partners in

¹ <http://www.nerwa.org/gwnews/db212.pdf>, The Value of Water and the Water Operator, by Doug Buresh, Circuit Rider #3

²

[http://thevalueofwater.org/sites/default/files/Economic%20Impact%20of%20Investing%20in%20Water%20Infrast](http://thevalueofwater.org/sites/default/files/Economic%20Impact%20of%20Investing%20in%20Water%20Infrast%20ructure_VOW_FINAL_pages.pdf)
ructure VOW FINAL pages.pdf-The Value of Water

Major Themes-WOTUS Issues

protecting our nation's water resources. Local governments manage broader water quality protection efforts such as managing stormwater, flood protection and enhanced watershed protection along with protecting the sources of drinking water. Local governments have the tools to strengthen wetland and stream protection efforts that better support community goals with greater protection for the resource. Integrated Planning (IP) offers municipalities the opportunity to meet multiple Clean Water Act requirements by sequencing separate wastewater and stormwater programs while maximizing investments so that the highest priority projects come first. EPA, states, and municipalities have achieved progress in implementing IP approaches while addressing the most serious water quality issues in order of priority to protect public health and the environment.

➤ **Clarity and Predictability**

A central theme heard by the LGAC in public meetings of state, local and tribal government officials on the 2015 'Waters of the U.S.' rule is that definitions were too broad or confusing and were subject to interpretation through litigation. Key terms used in the WOTUS rule are vague such as "uplands," "tributary," "floodplain," "significant nexus," "adjacent," and "neighboring" but are also important in defining what waters are jurisdictional. These terms are either broadly defined, or not defined at all which has led to further confusion, not less, over what waters fall within federal jurisdiction. Local governments need a rule that puts forward clear definitions and provides examples and graphics for further clarity. Without this clarity, it could lead to further unpredictability and result in unnecessary project delays, subjective judgements and inconsistency across the country.

➤ **Flexibility and Regionalization**

In formulating a revised 'Waters of the U.S.' rule it should have flexibility and reflect natural and regional variability of our nation's waters. As a basic approach, criteria could be established that recognizes natural ecoregions (delineated on the basis of natural and anthropogenic factors) to recognize geographic variability among regions. States and tribes should have further input in this process to modify or improve on this basic approach. Workgroups made up of federal, state and local officials could help establish local delineation factors characteristic of these regional waterbodies such as western ephemeral streams, and other unique wetlands such as pocosins, Carolina bays etc. should be factored. Western arid streams may need further regional determinations as whether these areas are washes and otherwise dry channels characterized by irregular (not seasonal) ephemeral flows or may actually qualify as waters of the United States. These jurisdictional calls of WOTUS should be the exception rather than the rule. Also, wetlands and streams in the State of Florida also should be considered in separate regional guidance since most of the State could be classified as a Waters of the U.S. due to high groundwater tables and surface connections with waters of the U.S.

➤ **Enhanced State and Local Government Role**

States play a vital role in the protection of wetlands by addressing waters and activities that *are not* regulated under the Section 404 program, or by imposing additional limits on activities that *are* regulated under that program. Pursuant to Section 404(g) of the Clean

Major Themes-WOTUS Issues

Water Act, a state can *assume* the authority to issue permits for the discharge of dredged or fill material into waters regulated under the Clean Water Act *other than traditional navigable waters or waters seaward of the high water mark*. See 33 U.S.C. § 1344(g). EPA's regulations also authorize tribes to assume Section 404 permitting authority within their jurisdiction (40 C.F.R. § 233.2). In order to assume Section 404 permitting program, a state must enact laws and regulations to create a program that meets requirements designed to ensure that the state can administer the Section 404 permitting program as the Corps. This process could be streamlined and could be incentivized for state assumption. States can play a greater role in the administration of the federal program and streamline permitting for developers in the state through a State Programmatic General Permit. CWA Section 404(e) authorizes the Corps of Engineers to issue general permits "on a state, regional or nationwide basis for any category of activities involving discharges of dredged or fill material" if there are only minimal adverse environmental effects. Local regulation of wetlands in addition to the state and federal programs have many benefits as well. Local decision makers have numerous land use tools available that can be more effective, and with less cost, protect sensitive landscapes valuable to their community such as with building permits, zoning authority, sanitary and health codes, and soil erosion control.

➤ **Modified Scalia Approach**

The Scalia opinion applies a narrow interpretation to CWA jurisdiction, extending the agencies' regulatory authority only to "relatively permanent, standing or continuously flowing bodies of water" connected to traditional navigable waters, and to "wetlands with a continuous surface connection to" such relatively permanent waters. Local governments in general support a narrow interpretation and put forward that the criteria in the June 2007 guidance has clear criteria for categorical jurisdiction of 'yes', 'no' or 'maybe' which might be considered as a modified Scalia approach. Local governments are also concerned about the assurances that water resources which provide (or potentially provide) our communities' drinking water and source water are regulated and protected. These significant waterbodies form the assets of our water infrastructure and these areas may or may not fall within the Scalia interpretation as "connected to a federal navigable waterway." Local governments would support States and Tribes assisting to identify these significant waterbodies by delineating and mapping these significant 'Waters of the State'. These areas once identified should have primacy in decision-making.

➤ **Exemptions**

Exemptions for stormwater and green infrastructure are important for local government. Local governments would be supportive of a revised rule that would retain codification of the waste treatment exemption. It should also extend to MS4s, stormwater ponds, settling basins recycled water facilities which depend upon artificially created wetlands and storage ponds to treat millions of gallons of water a day. There has also been a major concern of county governments that roadside ditches are exempt. The revised rule should affirm also that reservoirs along with influent and treated effluent storage ponds are within the scope of the waste treatment

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exemption, consistent with the regulatory definition of “complete waste treatment system” found in existing federal regulations including features such as storage ponds, basins, artificially created wetlands, recycled water reservoirs and other features associated with water recycling.³

➤ **Permitting Reform**

The permitting system is complex and outdated. Agencies' budgets and staffing are overwhelmed and lack resources to respond to individual permits. At the same time, the private sector confronts time-consuming requirements that pose significant delays and economic burdens. Permitting can be made more efficient and more effective. For example, permitting length of time can be done more efficiently (less than 60 days) and it can also be more flexible, decentralized and integrated with community goals. Local governments would be generally in favor of State Assumption of the 404 program. Also, further consideration of General Permits and mapping would aid in permitting reform.

➤ **Agriculture, Rural Communities and Waters of the U.S.**

Agriculture and rural communities have expressed concerns about the Waters of the U.S. Most of the concern of the rule has been whether it would modify existing statutory provisions that exempt “normal farming and ranching” practices from dredge and fill permitting or others that exclude certain agricultural discharges, such as irrigation return flow and stormwater runoff, from all CWA permitting. The other key area of concern was the confusion whether or not ditches were exempt. Normal agricultural and silvicultural practices are exempt but the interpretive rule issued to clarify the 56 practices that are exempt from CWA Section 404 permitting was very confusing to farmers. Other issues for rural communities is the NPDES permits for application of pesticides and herbicides in WOTUS. Also, there is a concern that ‘prior converted croplands’ which are exempt if they are certified by NRCS are also exempt from wetland regulations administered by the Army Corps of Engineers and EPA (Section 404 of the Clean Water Act). However, if the land changes to a non-agricultural use, or is abandoned, according to the criteria established by the Corps and EPA, it may be regulated under the CWA. These issues combined with the complexity of the WOTUS and the role of the NRCS poses significant issues for the agricultural sector and rural communities.

➤ **Outreach to Local Governments**

There is a need for enhanced outreach to local governments. Its significance in WOTUS decision-making is all the more critical. A comprehensive communication strategy is needed for local governments that improves the channels of information distribution, and explicit communication at all levels of government. Getting information into the hands of local governments where it will have the most impact must be a priority. This is particularly relevant in small, disadvantaged and ethnically diverse communities. Local governments need

³ 1 See 40 C.F.R. §35.2005(b)(12), defining “complete waste treatment system” as “all the treatment works necessary to meet the requirements of title III of the [CWA], involving . . . the ultimate disposal, including recycling or reuse, of the treated wastewater and residues which result from the treatment process.”

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to act effectively so that information will reach all relevant parties so it can also be readily communicated effectively to citizens. Therefore, there will be a pressing need to improve governmental communication and transfer of information among the EPA, state, tribal and local governments, and getting that information out to the public. Specific tailored information for local elected officials is also needed to convey the effective changes of the WOTUS rule.

Affordability

One of the common themes heard by LGAC members revolves around affordability. This issue has several components including the ability of ratepayers to pay the cost of regulatory compliance, pollution and clean up costs, punitive costs that only serve to reduce local government resources and the disproportionate costs for small and economically disadvantaged communities. If the goal is safe, clean drinking water throughout the country, innovation in approach and cost allocation must be considered at the federal, state and local levels.

DRAFT

The Definition of “Waters of the U.S.”

E.O. 13132 Federalism Consultation Meeting

April 19, 2017